Subpoenaed for Appl't
(A. A. McLaughlin)

267

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1924

No. [redacted] 144

CHARLES E. WELLS, APPELLANT,

vs.

PATRICK H. BODKIN AND ARABELLA BODKIN

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

FILED AUGUST 7, 1923

(29,797)

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INDEX

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Names and Addresses of Attorneys:

For Plaintiff and Appellant:

HENRY M. WILLIS, 511 Citizens National Bank Building, Los Angeles, California.

For Defendants and Appellees:

DAN V. NOLAND, 301 Union Oil Building, Los Angeles, California.

H. F. BRIDGES, 301 Union Oil Building, Los Angeles, California.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA.

Southern Division.

CHARLES E. WELLS, Plaintiff, vs. PATRICK H. BODKIN and ARABELLA BODKIN, his wife, Defendants.	E.—51 EQUITY. AGREED STATEMENT ON APPEAL UNDER EQUITY RULE NO. 77.

Come now the respective parties to the above entitled cause and by an agreed statement hereinafter set forth, pursuant to the provisions of Rule 77, present for determination upon appeal from the above entitled Court to the United States Court of Appeals for the Ninth Circuit, the issues hereinafter stated:

This is a suit in equity by Charles E. Wells, plaintiff, against Patrick H. Bodkin and Arabella Bodkin, his wife, defendants and patentees, to have defendants declared trustees holding legal title to certain lands near Blythe in Riverside County, California, to-wit: Tract 78 in Township 7 South, Range 22 East, San Bernardino Meridian, formerly

described as the Northwest quarter of Section 11, Township 7 South, Range 22 East, San Bernardino Meridian, in trust for plaintiff.

The cause was tried upon plaintiff's complaint and defendants' answer and amendment to the answer, which are as follows:

"COMPLAINT IN EQUITY.

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION:

Now comes Charles E. Wells, as a complainant, and respectfully represents and says that he is a citizen of the State of California, residing in the Palo Verde Valley, in Riverside County, and within the Southern Judicial District of California, Southern Division, and brings this his complaint against Patrick H. Bodkin and Arabella Bodkin, his wife, citizens of the State of California, residing in the Palo Verde Valley in Riverside County, within said Southern Judicial District, Southern Division of California, and presents this bill of complaint and says that this is a suit in equity arising under the constitution and the laws of the United States, and that the matter in controversy herein exceeds in value the sum of Three thousand ($3000.00) Dollars, exclusive of interest and costs; and for cause of complaint against the said Patrick H. Bodkin and Arabella Bodkin, his wife alleges:

I.

That the said plaintiff is, and at all times mentioned herein has been, a citizen of the United States, over the age of twenty-one years, and is now, and has been at all times mentioned herein, qualified under the laws of the United States, to make and perfect a homestead entry upon public lands of the United States, under the land laws of the United States.

II.

That on May 18, 1903, and for a long time prior thereto, the N.W.¼ of Sec. 11, T. 7 S., R. 22 E., S.B.M., situated in the County of Riverside, State of California, was, among other lands in the same neighborhood, open to entry under the land laws of the United States.

III.

That on or about May 18th, 1903, one Jacob H. Geiger duly made his homestead entry in the United States Land Office, at Los Angeles California, on said N. W. ¼ of Sec. 11, under the homestead laws of the United States; said Land Office then and at all times mentioned, being the United States Land Office having jurisdiction over said lands as provided by law.

IV.

That on or about the 8th day of September, 1903, the said lands, together with other lands in the neighborhood thereof, were duly withdrawn by order of the Land Department of the United States, under and by virtue of an act of Congress approved June

17th, 1902, and known as, and called the 'Reclamation Act,' from all forms of entry, said withdrawal being what is commonly known as and called, and designated by the Land Department of the United States as, a 'First Form Withdrawal;' and that said lands remained so withdrawn under said 'First Form Withdrawal,' until restored as hereinafter mentioned. That lands so withdrawn under said 'First Form Withdrawal' under said act of June 17th, 1902, cannot, under the terms and provisions of said Act, be entered, selected or located in any manner as long as such lands so remain withdrawn.

V.

That on January 30th, 1908, and while said lands were so withdrawn, one Florence V. Bodkin an unmarried daughter of the defendants herein, filed a contest against the said homestead entry of the said Jacob H. Geiger, on the said lands hereinbefore described, under and by virtue of the laws of the United States and the rules and regulations of the Land Department and subject to the act of Congress of May 14th, 1880, which said contest was recognized by the Land Department of the United States; that the Register and Receiver of the Local Land Office of the United States, at Los Angeles, California, entertained said contest and sustained the same in favor of said Florence V. Bodkin, upon the filing of a relinquishment by the said Jacob H. Geiger of his said entry, and made its report in due form to the Commissioner of the General Land Office, recommending a cancelation of said entry; that on or about

July 1st, 1908, the then Commissioner of the General Land Office sustained the decision of the Register and Receiver of the said Local Land Office, and canceled the said homestead entry of the said Jacob H. Geiger, and directed the said Register and Receiver to advise all parties in interest; that thereafter, to-wit, on July 1st, 1908, the Register and Receiver of the Local Land Office at Los Angeles, California, duly notified said Florence V. Bodkin of the cancelation of said entry; and at the same time notified her that she had been awarded a preference right to enter upon the said N. W. ¼ of Sec. 11, T. 7 S., R. 22 E., S.B.M., within thirty days after the said land had been restored to Public entry.

VI.

That, thereafter, by an order duly made by the Secretary of the Interior of the United States, to-wit, on January 10th, 1910, said lands together with other lands in the neighborhood thereof, were restored to public settlement on April 18, 1910, and to public entry on May 18, 1910.

VII.

That on April 18, 1910, plaintiff herein being then and there duly qualified under the land laws of the United States to make settlement and to make homestead entry on open public lands of the United States, made actual settlement on the said N.W.¼ of Sec. 11, T. 7 S., R. 22 E., S.B.M., in Riverside County, California, said lands being a part of the

lands so restored as hereinbefore alleged, with the intention of claiming the same under the homestead laws of the United States; that plaintiff thereby acquired a settler's right under and by virtue of the Act of Congress of May 14, 1880, relating to a settler's right; that he remained thereon as such settler and made his residence thereon, under and by virtue of the laws of the United States, and on May 18, 1910, duly made entry thereon, by filing his homestead application, as such settler, in the United States Land Office, at Los Angeles, California, and paying the fees required by law, and in all respects complied with the laws and rules and regulations of the Land Department, relating to homestead entries, and continued to reside thereon with his family, and make improvements thereon, until dispossessed by said defendants, by a judgment duly made and given in the Superior Court of the State of California, in and for Riverside County, and entered August 6th, 1914.

VIII.

That on May 18, 1910, but subsequent to the settlement and entry of plaintiff, said Florence V. Bodkin made her homestead entry on the same land in the United States Land Office at Los Angeles, California, claiming a preference right so to do, under and by virtue of said alleged preference right theretofore awarded her by the Register and Receiver of the Local Land Office of the United States, at Los Angeles, upon the successful termination of said contest against the entry of said Jacob H. Geiger.

IX.

That on May 18, 1910, all of said applications to enter and all said entries, were duly suspended by the Land Department of the United States, pending the settlement of a contest between the State of California and the United States of America, as to the character and disposition of said lands; that on May 22, 1912, by an order duly made and entered, said lands were again restored to public entry, subject to the entries already made thereon.

X.

That on March 25th, 1912 the said Florence V. Bodkin died, leaving surviving her as her heirs at law, the said Patrick H. Bodkin, her father, and said Arabella Bodkin, her mother, defendants herein.

XI.

That thereafter, on June 3, 1912, without notice or hearing and without evidence, and arbitrarily, the Register and Receiver of the Land Office, at Los Angeles, California, rejected and canceled the homestead entry of plaintiff, and notwithstanding the death of the said Florence V. Bodkin, allowed the homestead entry of said Florence V. Bodkin, on the sole ground that the said Florence V. Bodkin had acquired a preference right under the laws of the United States, by reason of the successful termination of the contest theretofore filed and concluded by her as hereinbefore alleged.

XII.

That thereafter plaintiff duly appealed to the Commissioner of the General Land Office, from such order of rejection, and on or about November 15, 1912, the said Commissioner duly affirmed said action of the Register and Receiver. That plaintiff thereupon duly appealed to the Secretary of the Interior of the United States from the order of said Commissioner, and on said appeal, the action of the Register and Receiver and Commissioner of the General Land Office, was, by said Secretary of the Interior, reversed on May 27th, 1913, and the said entry of Florence V. Bodkin canceled, and the entry of the plaintiff herein allowed for the stated reason that the said Florence V. Bodkin had died on March 25th, 1912, prior to the allowance of her entry. That thereafter a rehearing of said cause was had by said Secretary of the Interior, and on August 29th, 1913, said action of the Register and Receiver and said Commissioner was again reversed, and the said entry of Florence V. Bodkin canceled, and the entry of plaintiff allowed, for the stated reason that said Florence V. Bodkin had died on March 25th, 1912, prior to the allowance of her entry, and that her heirs, namely, Patrick H. Bodkin and Arabella Bodkin, father and mother, respectively, having already used and exhausted their homestead rights under the land laws of the United States, could not succeed to the rights of said Florence V. Bodkin, then deceased. That pursuant to said decision, the said

entry of Florence V. Bodkin was duly canceled on September 18, 1913, and the said entry of plaintiff duly allowed by the Register and Receiver of the Local Land Office on October 14th, 1913.

XIII.

That thereafter upon the application of the defendants herein, as heirs of the said Florence V. Bodkin, deceased, the Officers of the Department of the Interior of the United States, without notice or hearing or evidence and arbitrarily, on January 3, 1914, directed the Register and Receiver of the Local Land Office at Los Angeles, California, that defendant Patrick H. Bodkin, as father of said Florence V. Bodkin be allowed thirty days to elect whether he would relinquish his then homestead entry upon other lands, and make, with his wife, Arabella Bodkin, as co-heir, a homestead entry upon the land hereinbefore described, based upon said application of Florence V. Bodkin, and that in the event of his so doing, the homestead entry of the plaintiff on said lands should be canceled. That pursuant to said order and direction, the Register and Receiver at Los Angeles, California, notified said Patrick H. Bodkin thereof, and the said Patrick H. Bodkin acting thereunder, on March 6, 1914, delivered to the Land Department of the United States, his written relinquishment of a former homestead entry made by him on other lands. That thereupon the officers of the Land Department, acting arbitrarily, and without hearing or notice, and

contrary to law, canceled the homestead entry of plaintiff on May 2nd, 1914, and allowed the said defendant Patrick H. Bodkin, as co-heir with his wife of the said Florence V. Bodkin to make homestead entry upon the said lands, upon the sole ground and for the stated reason that the said Florence V. Bodkin had acquired a preference right under the laws of the United States to enter said lands within thirty days after said lands had been restored to public entry, by reason of the successful termination of the contest of the entry of Jacob H. Geiger, as hereinbefore alleged, and that said preference right descended to defendants herein as her heirs.

XIV.

That thereafter plaintiff adopted, used and exhausted all remedies provided by the laws of the United States, and the rules and regulations of the Land Department of the United States concerning appeals, and the exercise of Supervisory authority, in order to secure his right as a settler, and as a homestead entryman on said lands, under and by virtue of the said settlement and homestead application, but that the officers of the Land Department of the United States refused, and still refuse, to allow him the right he acquired under and by virtue of his settlement on said lands and hereinbefore alleged and his entry thereon under the homestead laws of the United States hereinbefore alleged; that plaintiff was, at the time of said application, and ever

since has been, and still is, duly qualified to make and perfect the right vested in him and granted by law; that by reason of, and through the action and decisions of the Officers of the Land Department of the United States, the said entry of plaintiff has been canceled and denied, and the said entry of the said Florence V. Bodkin has been allowed and approved as hereinbefore alleged, and patent to said lands was, about September, 1919, issued by the President of the United States to the heirs of said Florence V. Bodkin, deceased, to-wit, to the said Patrick H. Bodkin as co-heir with his wife, Arabella Bodkin, and delivered to said defendants, on January 5, 1920, all as the result of said action and decisions of the Officers of the Land Department of the United States and not otherwise.

XV.

And plaintiff further alleges that he is informed and believes, and upon such information and belief alleges, that the Officers of the Land Department of the United States, to-wit, the then Register and Receiver of the Local Land Office at Los Angeles, California, and the then Commissioner of the General Land Office who considered the contest of said Florence V. Bodkin against the former homestead entry of said Jacob H. Geiger, and who, upon cancelation of said entry of Jacob H. Geiger, as aforesaid, decided and advised the parties in interest in said contest particularly said Florence V. Bodkin, that a preference right was thereby awarded to said

Florence V. Bodkin to enter said lands within thirty days after restoration of the same to public entry, acted wrongfully and contrary to the law, by and through a misconstruction of and mistake in the application of the laws of the United States relative to the acquiring of a preference right by reason of such contest, particularly contrary to the express terms of the Act of Congress of May 14, 1880, wherein and whereby a preference right is declared, created, limited and defined.

XVI.

That the officers of the Land Department of the United States acted beyond their jurisdiction, and contrary to law, in arbitrarily, and without notice of hearing or trial, canceling the homestead application of plaintiff herein on May 2nd, 1914, as hereinbefore described and set forth, due to a misconstruction and misapplication of the law relating to the rights vested in this plaintiff by reason of his settlement on the lands described in said application, as hereinbefore alleged, and due to a misapplication and misconstruction and misconception of the law of the United States relating to the preference right created and defined in said act of Congress of May 14, 1880, and as defined and regulated by the rules and regulations of the Secretary of the Interior, particularly those duly issued on January 19, 1909; that the officers of the Land Department of the United States misapplied, misconstrued and misconceived the laws of the United States, relating to the right acquired by said plaintiff in making his settlement

and entry as aforesaid; and misapplied, misconstrued, and misconceived the purpose of the Laws of the United States in denying the same, and canceling the same, by virtue of the alleged preference right of said Florence V. Bodkin awarded her as aforesaid by said officers of the General Land Office, as a result of the successful termination of said contest against the homestead entry of the said Jacob H. Geiger as aforesaid.

XVII.

That the Register and Receiver of the Local Land Office at Los Angeles, and the Commissioner of the General Land Office, and the Secretary of the Interior, in deciding against the right claimed by said plaintiff, under and by virtue of his settlement and homestead entry, as hereinbefore alleged, and in favor of the heirs of the said Florence V. Bodkin, by virtue of the alleged preference right awarded her and recognized by the officers of the General Land Office of the United States, acted contrary to law, under and by reason of a misapprehension, a misconstruction, a misconception, and a disregard of the law of the United States, relating to contests and homestead entries, and settlers rights and preference rights.

XVIII.

That the actions and decisions of the officers of the Land Department as hereinbefore described, in denying plaintiff's right as a settler on the lands hereinbefore described, and the right acquired by

him under the land laws of the United States by reason of said settlement on April 18, 1910, and the filing of his application for homestead entry on May 18, 1910, and his compliance with the laws relating to homestead entries, and in granting the subsequent application to homestead made by the heirs of the said Florence V. Bodkin, on the ground that she had theretofore acquired a preference right under the laws of the United States, by virtue of the successful termination of her contest of the prior homestead entry of said Jacob H. Geiger were without the jurisdiction of the said officers of the said Land Department and were contrary to law, and void, due to a misconstruction, misapplication and misconception of the law on the subject by said officers.

XIX.

That by reason of the misconstruction, misapplication and misconception of said laws, as aforesaid, this plaintiff has been deprived of, and prevented from attaining title to the said lands embraced within his said homestead application, and that the defendants Patrick H. Bodkin, his wife, have been granted the title to the same by a patent from the President of the United States by reason of said actions and decisions of the said officers of the Land Department as aforesaid, and not otherwise.

XX.

That during all the time herein mentioned, and since April 18, 1910, the plaintiff had been ready, able and willing and qualified, under the laws of the

United States, to make and complete and perfect the homestead entry made by him as aforesaid, and that he had in fact complied with all the laws and requirements of the laws of the United States, and all the rules and regulations of the Land Department of the United States, relating to homesteads, so as to entitle plaintiff to a patent for the said lands, excepting the making and filing of final proof of completion and compliance, until he was ejected from said premises by judgment of the Superior Court of the State of California, in and for the County of Riverside, entered August 6th, 1914, as hereinbefore alleged.

XXI.

That the value of the rents, issues and profits of said land since the 6th day of August, 1914, and while plaintiff has been excluded therefrom by the defendants, is the sum of Five Thousand ($5000.00) Dollars per year.

WHEREFORE, plaintiff prays that a decree be entered herein declaring that the defendants hold the title to the lands hereinbefore described in trust for this plaintiff, and that the defendants be required to make a good and sufficient conveyance of said lands, and the title thereto to this plaintiff, and for the reasonable value of the use of said premises since August 6th, 1914, and for costs of this action, and for such other and further relief that may to the Court seem meet and equitable.

HENRY M. WILLIS
Solicitor for the Plaintiff."

"ANSWER.

Come now the above named defendants and for answer to plaintiff's complaint admit, deny and aver as follows:

I

They admit the averments of the unnumbered paragraph and also the averments of the numbered paragraphs I, II III, VI, and X.

II

Answering paragraph IV of plaintiff's bill they admit that the lands in the neighborhood of the lands involved in this suit were duly withdrawn by order of the Land Department of the United States under and by virtue of an Act of Congress approved July 17th, 1902, and known as and called the 'Reclamation Act' from all forms of entry, said withdrawal being what is commonly known as and called and designated by the Land Department of the United States, 'A First Form Withdrawal', and that said lands remained so withdrawn under said 'First Form Withdrawal' until restored as in said bill alleged; but defendants deny that the Northwest Quarter (NW¼) of Section Eleven (11), Township Seven (7) South, Range Twenty-two (22) East, S. B. M., being the lands involved in this suit and covered by the homestead entry of Jacob H. Geiger, were withdrawn by said order; and defendants aver the fact to be that said last described land covered by said Geiger entry was not effected by said withdrawal until the subsequent cancellation of said entry due

to and as a result of the contest of Florence V. Bodkin.

III.

Answering the averments of Paragraph V of plaintiff's bill, defendants admit the filing of a contest by Florence V. Bodkin on January 30th, 1908; but deny that said contest was filed while at or any time when the lands involved in said suit, to-wit, the Northwest Quarter (NW¼) of Section Eleven (11), Township Seven (7) South, Range Twenty-two (22), East, S. B. M., were withdrawn; and on the contrary allege that on January 30th, 1908, when said contest was filed said land was not effected by the said withdrawal order of September 8th, 1903 under said Act of June 17th, 1902; and further answering said paragraph V the defendants aver that the Register issued a notice to Jacob H. Geiger of the Bodkin contest against his entry and that such notice was duly served on said Geiger who thereafter on March 7th, 1908, effected cancellation of his entry by then filing a relinquishment thereof in the office of the Register and Receiver; and the defendants admit that thereafter the Register and Receiver of the local Land Office of the United States at Los Angeles, California, sustained said contest in favor of said Florence V. Bodkin upon the filing of the relinquishment of the said Jacob H. Geiger of his said entry and recommended to the Commissioner of the General Land Office the cancellation of said entry; and de-

fendants admit that on or about July 1st, 1908, the then Commissioner of the General Land Office sustained the decision of the Register and Receiver of the local Land Office and cancelled the homestead entry of the said Jacob H. Geiger, and directed the said Register and Receiver to advise all parties in interest, and thereafter, to-wit, on July 1st, 1908, the Register and Receiver of the local Land Office at Los Angeles, California duly notified said Florence V. Bodkin of the cancellation of said entry of said Geiger and at the same time notified her that she had been awarded a preference right to enter upon the said Northwest Quarter (NW¼) of Section Eleven (11), Township Seven (7) South, Range Twenty-two (22) East, S.B.M., within thirty days after the land had been restored to public entry.

IV

Answering paragraph VII of plaintiff's bill, defendants deny that on April 18th, 1910, plaintiff made actual settlement on the said Northwest Quarter (NW¼) of Section Eleven (11), Township Seven (7) South, Range Twenty-two (22) East, S.B.M., in Riverside County, California; but on the contrary allege that plaintiff for nearly two years prior to April 18th, 1910 had been a trespasser upon and unlawfully in possession of said tract of land; and that on said date, April 18th, 1910, said plaintiff was a trespasser and unlawfully in possession of said land, said lands being covered by the 'First Form Withdrawal' of September 8th, 1903 from and after

the date of the relinquishment of the said entry of the said Jacob H. Geiger on March 7th, 1908. Defendants admit that said lands were a part of the lands restored to entry by order of the Secretary duly made on January 10th, 1910, restoring said lands to public settlement on April 18th, 1910 and to public entry on May 18th, 1910; but defendants deny that plaintiff acquired any right as a settler or otherwise upon said lands by virtue of his said settlement in violation of the laws and regulations of the United States. Defendants admit that on May 18th, 1910, the plaintiff filed in the United States Land Office at Los Angeles, California, an application for homestead entry of the land involved; but deny that plaintiff made 'entry' on said date by filing his homestead application; and defendants deny that plaintiff complied with the laws and rules and regulations of the Land Department relating to homestead entries on said land in that he was a 'sooner' and trespasser in unlawful occupation of said land on the said 18th day of April, 1910. Defendants admit that plaintiff continued to unlawfully reside upon said lands and make improvements thereon until *dispossed* by said defendants by judgment duly made and given in the Superior Court of the State of California in and for Riverside County, and entered August 6th, 1914. And defendants specifically deny each and every and all of the other averments and conclusions contained in said paragraph VII of plaintiff's bill not herein expressly admitted.

V.

Answering paragraph VIII of plaintiff's bill the defendants aver that on May 18th, 1910, but not subsequent to any legal or lawful settlement by plaintiff, and not subsequent to any entry of plaintiff, said Florence V. Bodkin filed application to make entry of the land in suit in exercise of her preference right as the successful contestant of the homestead entry of Jacob H. Geiger; but defendants deny that such application so filed by the said Florence V. Bodkin was an entry; and deny that the filing of such application was subsequent to any entry of plaintiff.

VI

Answering paragraph IX of plaintiff's bill, the defendants admit that plaintiff's application and the application of Florence V. Bodkin was suspended, and that the suspension was revoked on or about May 22nd, 1912; but aver that the suspension was ordered on the request of the United States Surveyor General of the State of California for inquiry and investigation of that officer as to the accuracy of other official surveys of certain lands and not because 'of a contest between the State of California and the United States of America' as alleged in plaintiff's bill.

VII

Answering the averments of paragraph XI of plaintiff's bill defendants deny that on June 3rd, 1912 the Register and Receiver 'rejected and can-

celled the homestead entry of plaintiff'; and allege the fact to be that on said date those officers rejected the application of plaintiff who had not then an entry of the land, and on said date duly sent to him a notice of the rejection advising him that the rejection had been ordered 'for the reason that homestead application 010578 was filed for the same lands May 18th, 1910 by Florence V. Bodkin under preference right in Bodkin vs. Geiger,' and said officers forwarded to the said plaintiff with such notice a check numbered 1965 for the amount, to-wit, $16.00 which he had paid under his application, and for which he had received receipt from the Receiver numbered 363893. Defendants deny that such rejection of said application by said officers was 'without notice or hearing and without evidence and arbitrary'; and aver that such rejection was in every way conformable to law and the rules of practice before the Land Department of the United States and in accordance with due process. Defendants aver the fact to be that entry of the land in the name of Florence V. Bodkin under the application by her was allowed by the Register and Receiver on June 1st, 1912, and not June 3rd, 1912, as alleged in the bill, and was presumably allowed without notice by those officers of the death of said Bodkin.

VIII

Defendants admit the averments as to the findings and conclusions announced in the decisions and judgment rendered by the Commissioner of the Gen-

eral Land Office and the Secretary of the Interior, and as to the dates of cancellation of the Florence V. Bodkin entry and of the allowance of entry by plaintiff respectively as set out in paragraph XII of the bill.

IX

Defendants admit that on January 3, 1914, the Register and Receiver of the Local Land Office at Los Angeles, California were directed by the officers of the Department of the Interior of the United States that defendant Patrick H. Bodkin as father of said Florence V. Bodkin, should be allowed thirty days to elect whether he would relinquish his then homestead entry upon other lands and make with his wife, Arabella Bodkin as co-heir a homestead entry upon the land herein described, based upon said application of Florence V. Bodkin, and that in the event of his so doing the homestead entry of plaintiff on said lands should be cancelled; but defendants deny that such action by the officers of the Department of the Interior were without notice, or without hearing, or evidence, or arbitrarily done; and on the contrary allege the fact to be that such action was taken on two petitions by the defendants to the Secretary of the Interior for exercise of that officer's supervisory authority which petitions were filed September 29th, 1913 and October 27th, 1913, respectively after service of copies thereof on plaintiff by registered mail and after plaintiff had made two answers thereto, one of such answers being filed

October 7th, 1913, and the other being filed December 8th, 1913.

Defendants admit that pursuant to the decision of the Secretary of the Interior after a full hearing, and pursuant to said order and direction as aforesaid, the Register and Receiver at Los Angeles, California, notified said Patrick H. Bodkin thereof, and the said Patrick H. Bodkin acting thereunder, on March 6, 1914, delivered to the Land Department of the United States his written relinquishment for a former homestead entry made by him on other lands. Defendants admit that thereupon the officers of the Land Department cancelled the homestead entry of plaintiff on May 2nd, 1914, and allowed the said defendant, Patrick H. Bodkin with his wife as coheirs of the said Florence V. Bodkin to make homestead entry upon said lands; but defendants deny that said officers in so doing acted arbitrarily or without hearing, or without notice, or contrary to law; and defendants admit that the said Florence V. Bodkin was allowed to make homestead entry upon the said lands for the reason that she acquired a preference right under the laws of the United States to enter said lands within thirty days after said lands had been restored to public entry by reason of the successful termination of the contest of the entry of Jacob H. Geiger, and that said entry acquired by virtue of said preference right descended to defendants herein as her heirs.

X

Defendants deny that thereafter plaintiff adopted or used or exhausted all or any remedies provided by the laws of the United States and the rules and regulations of the Land Department of the United States concerning appeals, and/or the exercise of supervisory authority in order to secure his or any right as a settler and/or as a homestead entryman on said lands; and on the contrary allege that no steps whatever were taken by plaintiff in the Land Office after the cancellation of the homestead entry of plaintiff on May 2nd, 1914. Defendants admit that by reason of and through the actions and decisions of the officers of the Land Department of the United States, the said entry of plaintiff has been cancelled and the said entry of said Florence V. Bodkin has been allowed and approved, and that patent to said land was on October 23rd 1919, (not September 1919) issued by the President of the United States to the heirs of said Florence V. Bodkin, deceased, to-wit, to the said Patrick H. Bodkin as co-heir with his wife, Arabella Bodkin, and that said patent was delivered to them on January 6th, 1920.

XI

Answering paragraphs XV to XIX inclusive, of plaintiff's bill, defendants allege that they are informed and believe that the averments contained in said paragraphs present mere conclusions of law which need not be answered; but defendants deny that the officers of the Land Department of the

United States acted wrongfully or arbitrarily, or contrary to law, or without notice of hearing or trial when they decided and advised that a preference right was awarded to said Florence V. Bodkin to enter said lands within thirty days after restoration of the same to public entry; and on the contrary allege that such action was after due and legal notice, full hearing and careful consideration and in accordance with law; and defendants deny that the officers of the Land Department of the United States acted beyond their jurisdiction, and/or contrary to law or arbitrarily; or without notice of hearing or trial in cancelling the homestead application of plaintiff on May 2nd, 1914; and on the contrary allege that such cancellation was made after due notice and a full hearing and upon the exercise of supervisory authority by the Secretary of the Interior upon petition duly and regularly filed and served; and that such action by the officers of the Land Department of the United States was not due to any misconstruction, or misapprehension, or misapplication of law relating to the rights of plaintiff, and was not due to any misapplication, or misconstruction, or misconception of the laws of the United States relating to the preference right acquired by the said Act of Congress of May 14th, 1880; and further allege that such action was not due to any misapplication or misconstruction or misconception, or misapprehension of the meaning of the rules and regulations of the Secretary of the

Interior issued January 19th, 1909; and defendants deny that the officers of the Land Department of the United States misapplied or misconstrued or misconceived the purposes of the laws of the United States in cancelling the said entry of said plaintiff and allowing the entry of said Florence V. Bodkin by virtue of her preference right as a result of the successful termination of said contest against the homestead entry of the said Jacob H. Geiger as aforesaid. Further answering paragraph XIX defendants deny that plaintiff has been deprived of, and/or prevented from obtaining title to the said lands embraced within the said homestead application by reason of any misconstruction or misapplication of the laws and regulations of the United States; and deny that these defendants have been granted the title to same by reason of any misconstruction, misapplication, or misconception of said laws.

XII

Answering paragraph XX defendants deny that plaintiff had in fact complied with all the laws and requirements, or laws or requirements of the United States, and all the rules and regulations of the Land Department of the United States relating to homesteads, so as to entitle plaintiff to a patent for said lands; and on the contrary allege that plaintiff in violation of the laws, and in violation of the rules and regulations of the Land Department of the United States entered upon said lands about

two years prior to April 18th, 1910, when said lands were withdrawn from settlement or entry in any form, and that plaintiff could not under the laws, rules and regulations of the United States acquire any right whatsoever by so trespassing upon said lands.

XIII

Answering paragraph XXI defendants deny that the value of the rents, issues and profits of said land since the 6th day of August, 1914, is or has been the sum of Five Thousand ($5000.00) Dollars per year.

FURTHER ANSWERING SAID COMPLAINT AND AS AN AFFIRMATIVE DEFENSE THERETO, THE DEFENDANTS ALLEGE:

I

That upon relinquishment of the Jacob H. Geiger homestead entry on March 7th, 1908, the land covered by said entry thereupon became subject to the exclusive claim and right of the United States under the 'First Form Withdrawal' under the Act of June 17th, 1902, 32 Stat. 388, referred to in the fourth paragraph of plaintiff's bill, and was continually thereafter, and until April 18th, 1910, reserved to the United States and excepted from the body of lands to which claims by settlement or otherwise under the homestead or any of the general public land laws of the United States might or could be initiated or made.

II

That on or about April 18th, 1910, and for a long time prior thereto, and while said land involved in this suit was in a state of withdrawal, said plaintiff was unlawfully occupying and claiming possession thereof; that subsequent to April 18th, 1910, and until removed therefrom by judicial process, the plaintiff prevented occupancy of said land by Florence V. Bodkin through threats of acts of violence against her should she attempt to take and maintain possession of the same, such threats causing her to fear that she would place her life in jeopardy should she maintain possession of said land; that plaintiff's possession of the land at all times, both before and after April 18th, 1910, was with knowledge by him of Florence V. Bodkin's right of preference of entry thereto and his possession of such land at all times subsequent to April 18th, 1910 was with knowledge by him of Florence V. Bodkin's application to make homestead entry thereon which was filed on said date, and plaintiff's possession of said land subsequent to the cancellation of the entry of said Geiger on March 7th, 1908 was with knowledge of the withdrawal of said land prior to April 18th, 1910.

III

That all that was required of Florence V. Bodkin by law or regulations of the Land Department of the United States to duly and timely exercise and effectuate the preference right of entry of the land which she earned by reason of her contest against

the said Jacob H. Geiger entry was to file an application by her to enter the land which she did on May 18th, 1910, that being the date specified in the order of restoration of the land as the first day on which application to enter it could lawfully be received.

IV

That by reason of the suspension of her filing, together with other applications on the request of the United States Surveyor General for the State of California, for inquiry and investigation by that officer as to the accuracy of former official surveys of certain lands, Florence V. Bodkin rested under no legal obligation to enter into possession of the land covered by her application during the period of such suspension, and she did not therefore during that period take and maintain possession as to have done so would have been at the risk of violence against her by plaintiff in accordance with his threats and other acts of his calculated to intimidate, and actually intimidating her, nor was she during said period under any obligation to contest in the courts the matter of plaintiff's unlawful possession.

V

That upon termination of the period of such suspension the Register and Receiver, presumably acting without knowledge of the death of Florence V. Bodkin, allowed an entry of the land in her name and rejected the conflicting application of the plaintiff, whereupon the plaintiff appealed to the

Commissioner of the General Land Office who on November 5th, 1912, affirmed the judgment of the Register and Receiver, the Commissioner saying in his decision in part as follows:

> '. . . right as successful contestant was fully and effectually protected by the regulations effective at the time it accrued (33 L. D. 607) . . . nor could any settlement made by the appellant thereon after the attachment of such right, in the slightest manner affect her privilege (38 L. D. 355) . . . As Miss Bodkin's application, in all respects regular, filed as aforesaid, in the exercise of her right as a successful contestant, was, in the circumstances stated, the equivalent of an actual entry, it follows that there is no foundation for the appellant's objection to its allowance.'

V.

That the plaintiff appealed from the decision of said Commissioner to the Secretary of the Interior and the latter officer on May 27th, 1913, reversed the concurring judgments of the Register and Receiver and Commissioner in a decision in which he said among other things:

> 'It appears from the record that Bodkin died on March 25, 1912. It will thus be seen that she died prior to the allowance of her entry.
>
> No such right is acquired by mere application to make homestead entry as will, in the event of the death of the applicant, descend to his

widow or heirs or that can be disposed of by will; nor is there any authority of law for the allowance of entry, in such case, in the name of a deceased applicant. (Garvey V. Tuiska, 41 L. D. 510.)

Bodkin's entry is, accordingly, canceled and the application of Wells will be allowed in the event that he makes proper showing of present qualification to make homestead entry for the tract.'

That the heirs of Florence V. Bodkin duly filed a motion for rehearing of the said decision of the Secretary of the Interior which motion was denied by decision of that officer rendered August 29, 1913, in which he said, among other things:

'The reason assigned for the holding in the case of Garvey V. Tuiska (supra), that Congress has made no provision for succession and descent with reference to a mere application to enter, does not therefore apply in the case of an application to enter filed under a contestant's preference right, but in such cases, by the act of July 25, 1892 (27 Stat. 270) (supra), the contestants heirs have the right to perfect such application filed by him pending at his death and to make entry thereon.

In this case, however, it appears that Bodkin's heirs are her father and mother, equally, and that her father has made homestead entry in his own right, which precludes him and his

wife as heirs of this daughter from perfecting the application filed by her under her preference right as successful contestant against the prior entry for the land and erroneously allowed after her death; as heirs making homestead entry under a preference right initiated in their ancestor whom they succeed under said act of July 26th, 1892, must comply with all provisions of the homestead law, and reside upon, improve and cultivate the land the same as would their ancestor himself have been required to do had he made such entry. Becker v Bjerke. (36 L.D. 26); Heirs of Robert M. Averett, (40 L.D. 608) (supra).

Bodkin's entry must therefore, be canceled for the reasons above stated; and while Wells application when filed was properly subject to rejection because of Bodkin's superior right of entry, and his settlement prior to her death was wholly a trespass upon her rights, no legal reason now exists for rejecting his application, which was only suspended until its rejection June 3, 1912, and same should be allowed.'

VII

That thereafter the heirs of Florence V. Bodkin petitioned the Secretary of the Interior to exercise his supervisory authority in the case and to review his judgments on the appeal and under the motion for rehearing. That acting on such petition and after notice thereof to plaintiff and answers thereto

by him, the Secretary of the Interior by his decision of January 3, 1914, held as follows:

> 'He (Wells) is a party to the record but not in interest from any legal standpoint, and his appearance in the case is without prejudice to the right of Bodkin's heirs to perfect her application for entry. If guilty of having, by threats, intimidation and violence, prevented Bodkin from making settlement on the lands to which she had preference right of entry, and enjoying the benefit of such right from and after April 18, 1910, the date when said lands were restored to settlement and when she is alleged to have attempted to have been thus prevented by him from settlement, he should not be allowed to profit by his wrong if her heirs now desire to perfect her application by making entry thereon, which they have the technical right to do independently of any such threats, intimidations and violence, and notwithstanding the homestead entry made by her father, one of said heirs. He may not perfect both homestead entries, as he could not comply with law as to both, but he may elect which he will perfect, and the fact that he has already made homestead entry in his own right does not now preclude his election to make and perfect homestead entry, as co-heir with his wife, based upon the application of his daughter, notwithstanding present entry or Wells appearance in the case.

Thirty days from notice of this decision is therefore hereby allowed the father of said Florence V. Bodkin, appearing herein as one of her heirs, to elect whether he will relinquish his present homestead entry and make, with his wife as co-heir, homestead entry based upon said Florence V. Bodkin's application; at the expiration of which period further adjudication will be had.'

VIII

That upon the decision of the Secretary of the Interior of January 3, 1914, becoming final the defendant, Patrick H. Bodkin, on March 6, 1914, relinquished the homestead entry made in his individual right and tendered an application by himself and his wife, Arabella Bodkin, the other defendant here, as the sole heirs of Florence V. Bodkin, deceased, to make homestead entry of the land in suit; that thereafter the entry of the plaintiff was canceled; that thereafter the defendants made entry as the heirs of Florence V. Bodkin, deceased, resided upon and cultivated the land in suit for the period, in the manner and to the extent required of them by the homestead laws and after proof accordingly and on October 23, 1919 the land in suit was patented to them by the United States of America under such entry by them as such heirs.

AS A FURTHER AND SEPARATE DEFENSE DEFENDANTS ALLEGE:

That they and each of them have together resided, lived upon and since the 6th day of August, 1914,

held the actual, open, notorious, exclusive, peaceable and adverse possession of the Northwest Quarter (NW¼) of Section Eleven (11), Township Seven (7) South, Range Twenty-two (22) East,S.B.M., in Riverside County, California, and from said date have claimed and held the actual, open, notorious, exclusive, peaceable and adverse possession of said premises *of said premises* and every part thereof, claiming the same as their own and adversely to the plaintiff, and since said 6th day of August, 1914 have paid all of the taxes levied and assessed against said premises by the State of California and the County of Riverside, and that said defendants have thereby acquired as against said plaintiff a title by prescription to said premises.

WHEREFORE, defendants pray that plaintiff take nothing by his bill and that defendants recover their costs herein expended, and that they have such other and further relief as to the Court may seem just in the premises.

DUKE STONE
DAN V. NOLAND

PATRICH. H. LAUGHRAN,
Mills Bldg., Washington, D. C.
of Counsel."

"No. E-51

AMENDMENT TO ANSWER.

By leave of court first had and obtained, come now the defendants and file this amendment to their answer heretofore filed herein.

I.

In lieu of the last separate defense set forth in said answer heretofore filed, defendants allege the following: That they and each of them have resided, lived upon, and since the 6th day of August, 1914, have continuously and uninterruptedly held the actual, open, notorious, exclusive, peaceable, adverse possession of the northwest quarter of Section 11, T. 7 S., R. 22 East, S. B. M., in the county of Riverside, State of California, and from said date said possession has been by actual occupation, open and notorious and not clandestine; that said possession has been hostile to plaintiff's claim of title; that defendants' possession has been held under a claim of title exclusive of any other right, as their own; that defendants' possession has been continuous and uninterrupted for a period of five (5) years next before the commencement of this action; and since said 6th day of August, 1914, defendants have paid all of the taxes levied and assessed against said premises by the State of California and County of Riverside, and that said defendants have acquired as against said plaintiff a title by prescription to said premises.

As a further and separate defense, defendants allege that plaintiff's alleged cause of action is barred by the provisions of the Code of Civil Procedure contained in sections 318-319-321-322, 323-324 and 325.

DUKE STONE &
DAN V. NOLAND
Attorneys for Defendants."

The following facts are agreed to, and the following proceedings taken:

1. The following stipulation of facts was made by counsel for the respective parties, to-wit:

"It is stipulated by plaintiff and defendants, by their counsel, that the plaintiff Charles E. Wells is a resident of the Palo Verde Valley in Riverside County, within this Southern Judicial District; that this is a suit in equity arising under the statutes of the United States and the matter in controversy herein exceeds in value the sum of $3,000, exclusive of interest and costs.

It is further stipulated that the plaintiff is and at all times mentioned herein has been a citizen of the United States over the age of 21 years, and is now and has been at all times mentioned herein qualified under the laws of the United States to make and perfect a homestead entry upon public lands of the United States under the land laws of the United States; that on May 18, 1903, and for a long time prior thereto, the northwest quarter of Section 11, Township 7 South, Range 22 East, S.B.M., situated in the County of Riverside, State of California, was, among other lands in the same neighborhood, open to entry under the land laws of the United States. That on July 17, 1902, the following letter or order was issued and promulgated by the Land Office:

'Washington, D.C., July 17, 1902.

'Subject: Withdrawal and Suspensi on from Entry.

'Register and Receiver,
'U. S. Land Office,
'Los Angeles, California.

'Sirs:

'The Honorable Secretary of the Interior, by letter dated June 27, 1902, and his order indorsed thereon dated July 2, 1902, has directed the temporary withdrawal from settlement or other disposition under the public land laws, until relieved from suspension, of certain townships, some of which lie within your district. You are therefore directed to withdraw from disposal the following townships so far as surveyed and on file:

Then follow descriptions of a number of townships, among which appears the following:

'Townships 1 to 16 south, inclusive, Range 22 east, S.B.M."

Within which is included the quarter-section herein involved. The letter concludes as follows:

'Please acknowledge receipt.

'Signed) Binger Herrmann, Commissioner.'

MR. NOLAND: Before leaving that letter, should it not also at this point be stipulated that this is what is known as a second form withdrawal?

MR. WILLIS: It is stipulated that the letter just read into evidence is what is understood to be and commonly called a second-form withdrawal order under the Reclamation Act.

It is further stipulated that on May 18, 1903, one Jacob H. Geiger filed in the United States Land Office at Los Angeles his homestead application, subject to the Reclamation Act, to enter the Northwest Quarter of Section 11, Township 7 South, Range 22 East, S.B.M., in due and proper form, and paid the fees therefor. That on September 12, 1903, the Commissioner of the General Land Office issued the following order or letter—which it is stipulated between counsel is what is commonly called a first-form withdrawal order—the letter being in the words and figures following:

'Washington, D.C., September 12, 1903.

'Subject: Withdrawal for Irrigation.

'Register and Receiver,

'Los Angeles, California.

'Sirs:

"Following my telegram of the 10th instant withdrawing lands in your district for irrigation purposes by whole townships, you are now advised that by Departmental direction of the 8th instant you will temporarily withdraw the following lands, surveyed and unsurveyed, from all forms of disposal whatever under the first form of withdrawal authorized by Section 3 of the Act of June 17, 1902, 32 Stat. 386.'

Then follows in the letter a long list of townships and sections, among which appears the following:

'Section 11, Township 7 South, Range 22 East, S.B.M.'

Being the section including the quarter-section herein involved. The letter concludes as follows:

'Please acknowledge receipt hereof. Very respectfully,

(Signed) 'W. A. Richards,
Commissioner.'

It is further stipulated that on January 30, 1908, one Florence V. Bodkin filed in the United States Land Office at Los Angeles her contest affidavit contesting the homestead entry of Jacob H. Geiger on the Northwest Quarter of Section 11, Township 7 South, Range 22 East; that notices of contest were on the same day issued and the hearing thereof set for April 3, 1908; that on March 13, 1908, such contest was withdrawn by the contestant, and on the same day a relinquishment of the entry executed by Jacob H. Geiger was filed by contestant; that at the same time contestant paid the $1.00 cancellation fee, and a notice of preference right of thirty days given after the land was opened for entry.

It is further stipulated that by an order duly made by the Secretary of the Interior on January 10, 1910, the lands described in this complaint, together with other lands in the neighborhood thereof, were restored to public settlement on April 18, 1910, and to public entry on May 18, 1910.

It is further stipulated that on May 18, 1910, all applications to enter lands described in the complaint and all of said entries were duly suspended by the Land Department of the United States and that on May 22, 1912, by an order duly made and entered, said lands were restored to public entry, subject to the entries already made.

It is further stipulated that on March 25, 1912, the said Florence V. Bodkin died leaving surviving her, as her heirs at law, the said Patrick H. Bodkin, her father, and the said Arabella Bodkin, her mother, defendants herein.

It is further stipulated that the Northwest Quarter of Section 11, Township 7 South, Range 22 East, being the quarter-section described in the complaint herein, was, by a re-survey thereof, changed to be described as tract 78 in Township 7 South, Range 22 East, S.B.M., California, containing 160 acres, according to the official plat of the survey of said land returned to the General Land Office by the Surveyor General; and that by such description that quarter-section was patented to the heirs of Florence V. Bodkin by patent No. 71471 dated October 23, 1919, delivered on January 6th, 1920, and recorded on January 19, 1920, in Book 8 of Patents, page 58, of the Records of Riverside County."

2. That on July 1, 1908, the following notice was issued and delivered to Florence V. Bodkin by the Register of the United States Land Office at Los Angeles, California, to-wit:

"DEPARTMENT OF THE INTERIOR
United States Land Office,
Los Angeles, California.
Jul 1 1908.

Miss Florence V. Bodkin,
121 N. Main Street,
Los Angeles, Cal.

Madam: In the case of Florence V. Bodkin vs Jacob L. Geiger, involving Homestead entry No. 10239, made May 18, 1903, for the NW 1/4, sec. 11, T. 7 S. R. 22 E. S.B.M. You filed affidavit of contest Jany. 30th, 1908 and due service was had on Contestee and judgment had in your favor on the 13th of March, 1908 and the relinquishment by the said entry man was filed by you, having been procured through your contest.

Said land was withdrawn from entry pursuant to Commissioner's letter 'E' of Sept. 12th, 1903 and so remain withdrawn from entry.

You are notified that you have a preference right of entry for thirty days after the said land shall be restored to entry, and that during that time no one has any right to take possession of said land, or endeavor to settle upon or reclaim it adverse to you.

Very respectfully,
(Sgd.) Frank C. Prescott, Register."

3. That on May 18, 1910, at 9 o'clock A.M. Charles E. Wells filed in the United States Land Office at Los Angeles, California, his application

No. 010591, to enter, under Section 2289 Revised Statutes of the United States, the N. W. ¼,Section 11, Township 7 South, Range 22 East, S. B. Meridian, within the Los Angeles, California land district, and paid the required fees of $16.00, said application being in the usual and proper form for homestead entry, and containing at the end thereof the following words, to-wit:

"That I have made actual residence on said land and am now an actual settler thereon."

4. That on May 18, 1910, at 9 o'clock A.M. Florence V. Bodkin, filed in the same land office her application, No. 010578, to enter, under Section 2289, Revised Statutes of the United States, the N. W. ¼, Section 11, Township 7 South, Range 22 East, S. B. Meridian, within the Los Angeles,California land district, and paid the required fees of $16.00, said application being in the usual and proper form for homestead entry.

5. Plaintiff introduced in evidence the portion of the Register of Homesteads kept in the local land office, containing entries relating to the homestead entry of Charles E. Wells, which entries were and are as follows:

"KIND: Hd. 2nd Act of June 5, 1900. Serial No. 010591

NAME

Charles E. Wells.

ADDRESS

Blythe, Riverside Co. Cal.

DESCRIPTION OF LAND.

	SECTION.	TOWNSHIP.	RANGE.	AREA.
N W ¼	11	7S	22E	160

DATE	NOTATIONS.
1910	
May 18	Application filed. Suspended pending hearing as to character of land. U. S. Surv. Gen. letters, 4/15 and 5/13/10
May 18	Receipt No 363893 Fees $16.
1912	
May 24	Application rejected because of Hd. Appln. 010578 of Florence V. Bodkin for same lands, filed 5/18/10 under preference right in case Bodkin vs Geiger.
June 3	Notice of rejection to applicant together with check 1965 for $16.00
" 12	Service of rejection accepted. Reg.
1912	
July 6	Appeal filed-check 1965 returned.
July 31	Answer of Bodkin filed - as heir of Florence V. Bodkin-re Charles E. Wells, H. E.
1912	
Nov 20	"H" 11/15/12 affirms rejection.
Dec 2	Service of H 11/15/12 accepted. Reg. Mail
Dec 31	Claimant files appeal from decision of G.L.O. also evidence of service on Florence V. Bodkin.
1913	
Jan 9	Appeal by claimant transmitted to G.L.O.

Sept 23 H of 9/18/13 transmits Appln. of Wells for allowance allow Wells 30 days to perfect his Appln. and cancels the entry of Bodkin.

Sept 29 Notice of H 9/18/13 sent to claimant: Reg. Mail.

Oct 9 Service of H. 9/18/13 accepted. Reg. Mail.

" 14 Allowed by H 9/18/13.

Jan 30 1914. H of 1/26/14 allows Bodkin's father to elect whether he will retain his own Hd. or relinquish it and file on one as heir of Florence Bodkin. See Dept'l decision.

Mar 18 Evidence of Service to G.L.O. with report of allowance of H.E. 022872.

May 9 H of 5/2/14 finally cancels the entry and closes case to 010578.

May 15 Notice of above to Wells, Ord. Mail."

6. Plaintiff introduced in evidence the portion of the Register of Homesteads kept in the local land office containing entries relating to the homestead entry of Florence V. Bodkin, which entries were and are as follows:

"KIND: Hd. SERIAL No. 010578

NAME

Florence Verne Bodkin.

ADDRESS.

Neighbours, Riverside Co. Cal.

DESCRIPTION OF LAND

N W ¼

SECTION.	TOWNSHIP.	RANGE.	AREA.
11	7S	22E	160

DATE.		NOTATIONS.
1910		
May	18	Application filed. Suspended pending hearing as to character of land. U. S. Surv. Gen. letters 4/16 and 5/13/10.
"	18	Receipt No. 363880, Fees $16.
1912		
May	22	Restored telegram May 22, 1912.
June	1	Entry allowed. Notice of Election Mailed June 20/12.
Dec	3	Affidavit filed by P.H.Bodkin, Neighbours, Cal. that he entered on this entry of his deceased daughter and cleared about 2 acres on Nov. 29, 1912.
1913		
Jan	9	Appeal filed by Charles E. Wells (010591) Transmitted to G.L.O.
Sep	23	"H" of 9/18/13 transmits appln. of Wells for allowance and finally rejects this entry.
1914		
Jan	30	H of 1/26/14 transmits dept'l decision allowing Florence V. Bodkin's father to elect whether he will retain his own homestead or relinquish and file on a homestead with his wife as co-heir on the appln. of Florence V. Bodkin.

Feb 6 Notice of H. 1/26/14 sent to claimant: Reg. Mail.
" 12 Service of H 1/26/14 accepted. Reg. Mail
Mar 18 Evidence of service Trans. G.L.O. with report of filing entry by Bodkin.
Mar 9 H of 4/2/14 finally closed the case and cancels 010591."

7. That on June 3, 1912, the Register and Receiver of the Los Angeles land office gave the following notice of rejection to Charles E. Wells, to-wit:

DEPARTMENT OF THE INTERIOR

"CRN United States Land Office 010591
Los Angeles, California,
June 3, 1912.

NOTICE OF REJECTION
of Suspension.

Charles E. Wells,
Blythe, California.

Sir:

In reference to your application to make Homestead Entry No. 010591, filed May 18, 1910, for the NW 1/4, Section 11, Township 7 S., Range 22 E, S.B. Meridian, you are advised that on May 24, 1912, the Register and Receiver of this office rejected the same for the reason that Homestead Application 010578 was filed for same lands May 18, 1910, by Florence V. Bodkin, under preference right in Bodkin v. Geiger.

Check No. 1965, for $16.00, repayment account of Receipt No. 363893, inclosed herewith.

You are allowed thirty days from notice hereof in which to appeal from this decision to the Commissioner of the General Land Office; and upon your failure to take such action within the time specified, the case will be closed without further notice to you from this office. If an appeal is taken herefrom it must be filed in this office.

Please return this letter, in case you take any action or desire further information on the subject.

Respectfully,

(Sgd.) Frank Buren.
Register.

(Sgd.) O. R. W. Robinson.
Receiver."

8. That said Charles E. Wells appealed in due time and form from said decision of the Register and Receiver to the Commissioner of the General Land Office at Washington, D. C., and on November 15, 1912, the Commissioner's decision thereon was rendered in the following language:

"Los Angeles 010578 & 010591. "H" E.E.Y.
November 15, 1912.

Charles E. Wells	)	
	)	Affirming
v.	)	Wells' application rejected
	)	Subject to appeal.
Florence V. Bodkin.	)	

Register and Receiver,
Los Angeles, California,
Gentlemen:

Charles E. Wells has appealed from your rejection of his homestead application 010591, filed May 18, 1910, for the NW 1/4 Sec. 11, T. 7 S., R. 22 E., S.B.M., under the facts hereinafter recited.

The land involved was withdrawn under a first-form withdrawal September 8, 1903, and retained that status until on January 10, 1910, it was restored to settlement on April 18, and to entry May 18, 1910, on which last named date, on request of the Surveyor General, it was suspended pending an investigation as to its character, from which suspension it was relieved on May 22, 1912.

On May 18, 1903, one J. L. Geiger Made H. E. No. 10039 for said land, against which on January 30, 1908, Miss Florence V. Bodkin filed affidavit of contest, upon which notice was issued and served, after which the entryman, on March 7, 1908, relinquished, whereupon, on July 1, 1908, the contestant was advised of such reclamation withdrawal, and that her preferential right under her contest would be held suspended awaiting restoration of the tract to entry.

On May 18, 1910, Miss Bodkin filed homestead application No. 010578 for the described land, which was held pending the result of the investigation by the surveyor general, and on the same date Charles

E. Wells filed his homestead application No. 010591, for the same tract, alleging that he had established his actual residence thereon, which was also suspended.

The land having been relieved from such suspension, you on June 1, 1912, allowed the application by Bodkin, and on June 3, rejected that of Wells for conflict therewith.

The appellant contends that you were in error in holding that Bodkin acquired any right under her contest, in not ordering a hearing, and in not holding that whatever right she might have had under such contest was terminated by the regulations of January 19, 1909 (37 L.D. 365).

In also appears that the applicant Bodkin died March 25, 1912, leaving two heirs, who have appeared in the case, and upon which it is also insisted by the appellant that you were in error in allowing her application.

Miss Bodkin's right as a successful contestant was fully and effectually protected by the regulations effective at the time it accrued (33 L.D., 607), and under which she was entitled to thirty days from notification in which to make application for the land, after its restoration, nor could any settlement made by the appellant thereon, after the attachment of such right, in the slightest manner affect her privilege. (38 L.D. 335).

As Miss Bodkin's application, in all respects regular, filed as aforesaid, in the exercise of her right as a successful contestant, was, in the circum-

stances stated, the equivalent of an actual entry, it follows that there is no foundation for the appellant's objection to its allowance.

Your action is affirmed subject to the usual right of appeal, of which you will notify the appellant and in due time report.

Very respectfully,

(Sgd.) S. V. Proudfit.
Assistant Commissioner.

Board of Law Review
(Sgd.) John P. McDowell."

9. That said Charles E. Wells appealed in due time and form from said decision of the Commissioner to the Secretary of the Interior, and on May 27, 1913, the Secretary's decision thereon was rendered in the following language:

"OFFICIAL COPY
DEPARTMENT OF THE INTERIOR
Washington.

D-23027 May 27 1913

Charles E. Wells	)	"H"
	)	Los Angeles 010578, 010591.
v.	)	Homestead application
	)	rejected,
Florence V. Bodkin.	)	Reversed.

APPEAL FROM THE GENERAL LAND OFFICE.

Charles E. Wells has appealed from the decision of the Commissioner of the General Land Office,

dated November 15, 1912, rejecting his homestead application, filed on May 18, 1910, for the NW 1/4. Sec. 11, T. 7 S., R. 22 E., S.B.M., Los Angeles, California, land district, because of conflict with the homestead entry of Florence V. Bodkin, allowed on June 1, 1912, upon her application filed on May 18, 1910.

It appears from the record that Bodkin died on March 25, 1912. It will thus be seen that she died prior to the allowance of her entry.

'No such right is acquired by mere application to make homestead entry as will, in the event of the death of the applicant, descend to his widow or heirs or that can be disposed of by will; nor is there any authority of law for the allowance of entry, in such case, in the name of a deceased applicant.'

(Garvey v. Tuiska, 41 L.D., 510.)

Bodkin's entry is, accordingly, canceled and the application of Wells will be allowed in the event that he makes proper showing of present qualification to make homestead entry for the tract.

(Signature illegible)
Assistant Secretary."

10. That the defendants, Patrick H. Bodkin and Arabella Bodkin, his wife, as heirs of said Florence V. Bodkin, duly filed and made a motion for rehearing on the decision of the Secretary of May 27, 1913, and on August 29, 1913, the Secretary rendered his decision, denying said motion, in the following language:

"OFFICIAL COPY
Department of the Interior
Washington

D-23027 August 29, 1913.

Charles E. Wells,)
) "H"
v.) Los Angeles-010578, 010591.
) Conflicting preference right
Florence V. Bodkin.) and intervening applicants.
Motion denied.

MOTION FOR REHEARING IN RE DEPARTMENTAL DECISION OF MAY 27, 1913.

The Department has considered motion for rehearing filed in the above entitled cause wherein the Department May 27, 1913, rendered decision reversing that of the Commissioner of the General Land Office and canceling the homestead entry involved in said cause allowed June 1, 1912, upon the Application filed by Florence V. Bodkin May 18, 1910, and directing the allowance of the homestead application filed the same date by Charles E. Wells for the same lands upon proper showing of his present qualifications to make such entry, for the stated reason that said Bodkin had died March 25, 1912, prior to the allowance of her entry, following the Department's decision in the case of Garvey v. Tuiska (41 L.D., 510), holding that no descendable right attaches to a mere application to make homestead entry.

It appears from the record that said Bodkin filed contest against a prior entry for said lands made by

one J. H. Geiger under which Geiger relinquished his entry March 7, 1908, and Bodkin was notified July 1, 1908, of her preference right accordingly and that same would be held suspended awaiting restoration of said lands to entry, the same then being under a first form withdrawal. On January 10, 1910, order was issued restoring said lands to settlement April 18, and to entry May 18, 1910, on which latter date said Bodkin and said Wells filed simultaneous applications for entry, Wells stating he had settled on said lands, the date not stated, which were suspended for investigation by the surveyor general, and upon such suspension being removed Bodkin's application was allowed June 1, 1912, and Wells' rejected for conflict therewith June 3, 1912. The Commissioner November 15, 1912, affirmed such action, holding that no settlement by another could deprive Bodkin of her preference right of entry, and that her application duly filed was equivalent to an actual entry.

The Department in the case of Garvey v. Tuiska cited, held that Tuiska acquired no right by the filing of his application that could descend to his widow or heirs or be disposed of by sale, the reason assigned for such holding being that 'Congress has made no provision for succession and descent with reference to a mere application to enter.'

It is urged that Bodkin's application is not a 'mere application to enter', but, by reason of having been filed by her under her preference right as successful contestant against Geiger's entry, is based

upon a statutory right of entry given by the act of May 14, 1880 (21 Stat., 140—), and preserved, as contended, to her heirs by the act of July 26, 1892 (27 Stat., 270).

The former act provides that such contestant 'shall be allowed thirty days from date of such notice (of cancellation of the contested entry) to enter said lands', and the latter act provides:

'That should any person who has initiated a contest die before the final termination of the same, said contest shall not abate by reason thereof, but his heirs who are citizens of the United States, may continue the prosecution under such rules and regulations as the Secretary of the Interior may prescribe, and said heirs shall be entitled to the same rights under this act that contestant would have been if his death had not occurred.'

While a contest is terminated so far as the contestee and his rights under his contested entry are concerned when such entry is canceled, it cannot fairly be said that the contest is thereby terminated as regards the contestant and his statutory rights based thereon. He is given by the act of May 14, 1880 (supra), if a qualified person, a right of entry, as to the lands involved, as a reward for initiating contest and prosecuting same to a cancellation of the contested entry, and he must be assumed to have in contemplation when he initiates his contest, as he is required by the present rules of practice to have, the ultimate making of an entry based on such contest as its fruition and end. His contest carries

with it, therefore, an incipient and inchoate statutory right of entry and is in legal effect subsisting as between him and the United States, as the basis for such right of entry, until said right is exercised, waived or lost by some act of his or is foreclosed by some interest of the Government or by limitation of the law. Neither the contestee nor any other person can, by settlement or otherwise, acquire any interest in the lands after initiation of the contest and prior to termination of the contestant's right of entry based by the statute thereon which is superior to such right in the contestant. Therbjorsen v. Hindman (38 L.D., 335).

The purpose of the act of July 26, 1892 (supra), giving to a contestant's heirs the right of succession to his contest and title to 'the same rights' he would have if he had not died, was, as stated in the case of Heirs of Robert M. Everett (40 L.D., 608):

'. . . to provide a means whereby the heirs of a deceased contestant might derive the same benefits from a contest commenced by their ancestor in his lifetime that such ancestor himself might have been entitled to had he lived; that is, the joint right of the heirs to continue the prosecution of a contest and a preference right to make entry of the land by all of said heirs who are citizens of the United States.'

This statute was manifestly enacted in recognition of the rights acquired and acquirable by a contestant under his contest and was designed to se-

cure all such rights to the contestant's heirs. To restrict the term used, 'the final termination of the' contest, to the termination thereof as regards the contestee, only, would be contrary to the reason and purpose of the act. No interest of the contestee called for the enactment of such a law. The interest of the contestant, however, based upon a consideration, the payment of the costs of contest on the promise of a prospective right of entry, called for just such an enactment which should secure to such contestant and to his heirs that for which such consideration had been given by him, in part if not wholly as in the present case; and good faith on the part of the United States with such contestant required such an enactment to apply to all cases where the contestant's death intervenes before the right of entry given him inchoately with his privilege of contest is merged into actual entry or otherwise extinguished in some of the ways indicated. It is within the reason and spirit of the statute so to construe it, and such construction is consonant to the terms and necessary to effect the purpose and object of the statute. 'Where a provision admits of more than one construction, that one will be adopted which best serves to carry out the purposes of the act.' Bernier v. Bernier (147 U. S. 242).

The reason assigned for the holding in the case of Garvey v. Tuiska (supra), that Congress has made no provision for succession and descent with reference to a mere application to enter, does not there-

fore apply in the case of an application to enter filed under a contestant's preference right, but in such cases, by the act of July 26, 1892 (supra), the contestant's heirs have the right to perfect such application filed by him and pending at his death and to make entry thereon.

In this case, however, it appears that Bodkin's heirs are her father and mother, equally, and that her father has made homestead entry in his own right, which precludes him and his wife as heirs of this daughter from perfecting the application filed by her under her preference right as successful contestant against the prior entry for the lands and erroneously allowed after her death; as heirs making homestead entry under a preference right initiated in their ancestor whom they succeed under said act of July 26, 1892, must comply with all provisions of the homestead law, and reside upon improve and cultivate the land the same as would their ancestor himself have been required to do had he made such entry. Becker v. Bjerke (36 L.D., 26); Heirs of Robert M. Averett (supra).

Bodkin's entry must, therefore, be canceled for the reasons above stated; and while Wells' application when filed was properly subject to rejection because of Bodkin's superior right of entry, and his settlement prior to her death was wholly a trespass upon her rights, no legal reason now exists for rejecting his application, which was only suspended until its rejection June 3, 1912, and same should be allowed.

This motion is accordingly, for the reasons above appearing, denied.

(Sgd.) Andreas A. Jones,
First Assistant Secretary."

11. That defendants, as heirs of Florence V. Bodkin, thereafter filed and presented their petition to the Secretary of the Interior for the exercise of his supervisory authority in the matter embraced in said decisons, and on January 3, 1914, the Secretary rendered his decision in the following language:

"DEPARTMENT OF THE INTERIOR
Washington.

D-23027 Jan 3, 1914

Charles E. Wells	)	"H"
v.	)	Los Angeles 010578,
Heirs of Florence V.	)	010591. Conflicting pref-
Bodkin.	)	erence right applicant's heirs and intervening applicant.

Remanded.

PETITION FOR THE EXERCISE OF SUPERVISORY AUTHORITY.

The Department has considered the petition for the exercise of its supervisory authority filed by the heirs of Florence V. Bodkin in the above entitled cause, wherein decisions were rendered May 27, 1913, on appeal, reversing that of the Commissioner of the General Land Office and cancelling said Bod-

kin's homestead entry allowed after her death upon her application filed, under an acquired preference right, prior thereto, and August 29, 1913, on motion for rehearing, which was denied (42 L.D., 340), holding that, while said entry was erroneously allowed in the name of Bodkin, and that entry on her application pending at her death was only allowable in the name of her heirs, yet her heirs, her father and mother, cannot be allowed to make such entry because of its incompatibility and conflict with the homestead entry already made by her father, as the required compliance with law could not be made by him on both entries covering the same period of time.

It is urged in this petition that Bodkin's homestead application lapsed at her death, and that her heirs acquired a right to exercise her preference right by any other form of entry or purchase they desired; also, that they have a right thus to perfect her preference right by reason of the fact her exercise of such preference right was under suspension by the government, while the lands involved were embraced in a first-form withdrawal thereof, and her application while said lands were being investigated by the surveyor general until after her death, and of the further stated fact she was prevented from establishing residence or settling on the lands by threats, intimidation and violence on the part of one Charles E. Wells, an adverse interven-

ing settler and applicant, whose application filed simultaneously with hers the Department directed be allowed.

As Bodkin's death occurred long after thirty days from restoration of said lands and notice to her of such restoration, and she had within said thirty days, the preference right period, exercised such right by filing her homestead application, both her and her heirs' rights in the premises are concluded and fixed so far as the form of entry under such preference right is concerned, and no substitution for her homestead application of some other form of entry or purchase after said thirty days could have been made by her or can be by her heirs so as to preserve such preference right or extend same beyond said thirty days.

The fact of the suspension, for governmental or administrative purposes, of the exercise of her preference right and of her application is immaterial and has no bearing on the case whatever.

As stated in the decision on the motion for rehearing herein, Well's settlement prior to Bodkin's death was 'wholly a trespass upon her rights', and his application was properly subject to rejection when filed. He is a party to the record but not in interest from any legal standpoint, and his appearance in the case is without prejudice to the right of Bodkin's heirs to perfect her application for entry. If guilty of having, by threats, intimidation and violence, prevented Bodkin from making settle-

ment on the lands to which she had preference right of entry, and enjoying the benefit of such right from and after April 18, 1910, the date when said lands were restored to settlement and when she is alleged to have attempted and to have been thus prevented by him from settling, he should not be allowed to profit by his wrong if her heirs now desire to perfect her application by making entry thereon, which they have the technical right to do independently of any such threats, intimidations and violence, and notwithstanding the homestead entry made by her father, one of said heirs. He may not perfect both homestead entries, as he could not comply with the law as to both, but he may elect which he will perfect, and the fact he has already made homestead entry in his own right does not now preclude his election to make and perfect homestead entry, as co-heir with his wife, based upon the application of his daughter, notwithstanding his present entry or Wells' appearance in the case.

Thirty days from notice of this decision is therefore hereby allowed the father of said Florence V. Bodkin, appearing herein as one of her heirs, to elect whether he will relinquish his present homestead entry and make, with his wife as co-heir, homestead entry based upon said Florence V. Bodkin's application, at the espiration of which period further adjudication will be had.

The case is remanded for action in accordance with the foregoing.

First Assistant Secretary."

That decision was signed by some Assistant Secretary.

H. M. W.
D. V. N.

12. That on January 26, 1914, the Commissioner of the General Land Office made and sent the following letter and order to the Register and Receiver at Los Angeles, California, to-wit:

"Los Angeles, 010578.

In reply please refer to:
"H"
J.L.M.

DEPARTMENT OF THE INTERIOR

General Land Office,
Washington.

ADDRESS ONLY THE
COMMISSIONER OF THE GENERAL LAND OFFICE.

Jan. 26, 1914.

Charles E. Wells)
v.)
Heirs of Florence V. Bodkin.)

Register and Receiver,
Los Angeles, California.

Sirs:

September 18, 1913, this office, by direction of the Department, cancelled H. E. 010578, for NW 1/4 Sec. 11, T. 7 S., R. 22 E., made by Florence V. Bodkin, and closed the above-entitled case, and you were

directed to allow Charles E. Wells to make entry of the land.

You will find herewith copies of departmental decision of January 3, 1914, directing that the father of Florence V. Bodkin be allowed thirty days to elect whether he will relinquish his present homestead entry and make, with his wife as co-heir, homestead entry based upon said Florence V. Bodkin's application, at the expiration of which period further adjudication will be made.

You will promptly notify the parties of the decision of the Department, and in due time report action taken.

Very Respectfully,
(Sgd.) C. M. Bruce,
Assistant Commissioner."

13. Plaintiff introduced in evidence the portion of the serial Homestead Docket kept in the local land office, containing entries relating to the homestead entry of Patrick H. Bodkin, as one of the heirs of Florence V. Bodkin, being Homestead Application Serial No. 022872, which entries were and are as follows:

01877

"KIND: Hd. SERIAL No. 02872

NAME

Patrick H. Bodkin one of the heirs for the heirs of Florence V. Bodkin, deceased.

ADDRESS

Neighbours, Cal.

DESCRIPTION OF LAND	SECTION.	TOWN-SHIP.	RANGE.	AREA.
Tract 78 N-W-½	11	7S	22E	160

DATE Receipt No 1374213 NOTATIONS. $16.00

Mar-6 1914 Application and suspended for copy of Natl. papers. See "H" 1/26/14—Personal Service.

Mar-9 1914 Natl. certificate filed.

9 Allowed.

Sept 22 Application to contest filed. C-No 2857 (4)

1917

Mar 2 Notice of 3-year proof filed.

April 18 Notice of Intention to offer 3-Yr. Proof filed.

May 1 Notice for Pub. issued—R. & R. 6/6/17 Published in Blythe Herald.

28 Chief of Field Division advises "No investigation warranted".

June 6 Proof of publication filed.

25 Notice of Intention to offer 3-Yr. proof filed

" 27 Notice for Pub. issued—R. & R. 8/7/17 9 A.M.

1917

Aug 7 C.F.D. advises "No investigation warranted." Final proof made—Re. No 1913842—$10.00
(4.00) Testy fee)

(6.00 Com.) suspended for proof of publication and evidence of naturalization.

1917

Aug 13 Proof of Pub. filed.

Aug 17 F/C issued—Dup. to claimant (9/5/17)

Aug 17 Evidence of naturalization filed.

Sept 8 F. P. and related papers to G. L. O with 8/17 returns.

Sept 27 "C" CPC 9/20/19 corrects description to read Tract 78 T. 7S. R. 22E. according to Plat of Re—Sur. approved 4/1/18 also this entry to Heirs of Florence V. Bodkin.

Oct 11 Final Certificate returned corrected and again mailed to P.H.B.

Nov 10 Patent 714711 Issued 10/23/19 received and claiments notified.

1920

Jan 5 Patent to P. H. Bodkin by mail at Neighbors, Calif."

14. That on March 6, 1914, Patrick H. Bodkin, one of the heirs and for the heirs of Florence V. Bodkin, deceased, filed an application to enter, under Section 2289, Revised Statues of the United States, the said N. W. ¼ Section 11, Township 7 South, Range 22 East, S. B. Meridian, said application bearing serial number 022872, and being in the usual and proper form for homestead entry, and paid the fees of $16.00 required.

15. That attached to said homestead application, No. 022872, and filed therewith, is an affidavit of Patrick H. Bodkin and Bella E. Bodkin, the defendants herein, which affidavit is in the following words and figures:

"In the Matter of Application of Patrick H. Bodkin and Bella E. Bodkin, his wife, the sole and legal heirs of Florence V. Bodkin, deceased, to make homestead entry of NW 1/4 Sec. 11, T. 7S., R. 22E., S.B.M.

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES, SS:

Patrick H. Bodkin and Bella E. Bodkin, the sole and legal heirs of Florence V. Bodkin, deceased, being first duly sworn, each for himself doth depose and say: That Florence V. Bodkin, daughter of these applicants, died on the 25th day of March, 1912; that prior to her death and on the 18th day of May, 1910, said Florence V. Bodkin, under preference right granted to her by the Department of the Interior, made homestead application, Serial No. 010578, for the NW 1/4 Sec. 11, T. 7S., R. 22E., S.B.M., and on June 1, 1912, entry receipt was issued therefor by the Register and Receiver of the United States Land Office at Los Angeles, California; that under letter "H" of January 3, 1914, the Secretary of the Interior has directed, that the heirs of Florence V. Bodkin may perfect her application by making entry thereon; that Patrick H. Bodkin made homestead entry No. 010652 for the NE 1/4 Sec. 11,

T. 7S., R. 22E., and the Secretary of the Interior has directed, by said letter "H", that said Patrick H. Bodkin to elect whether he will relinquish his prior homestead entry and make with his wife as co-heir, homestead entry based upon Florence V. Bodkin's application; that Patrick H. Bodkin, one of these affiants, has made such election and relinquished said homestead entry No. 010652 for the NE 1/4 of Sec. 11, T. 7S., R. 22E., S.M.B., and jointly, with his wife, as the co-heir of their said daughter Florence V. Bodkin, make application to perfect the application of said Florence V. Bodkin to enter the NW 1/4 of Sec. 11, T. 7S., R. 22E., S.B.M.; that Patrick H. Bodkin, one of the affiants in this affidavit mentioned, was born in Ireland under the Kingdom of Great Britain and has been duly naturalized as a citizen of the United States under the naturalization laws of the United States and was naturalized in the year 1910, a certified copy of said naturalization certificate is made a part of this application; that Bella E. Bodkin, the other affiant in this affidavit mentioned, was born in the State of Ohio, United States of America, and that these affiants were married on the 31st day of January, 1879, in the State of Iowa and ever since have been and now are husband and wife, and are the sole and legal heirs of said Florence V. Bodkin, deceased; that these affiants reside on the NE 1/4 Sec. 11, T. 7S., R. 22E., S.B.M., in Riverside County, California; that affiant Patrick H. Bodkin, has not heretofore made any entry under

the homestead laws, except homestead entry No. 010652 for the NE 1/4 Sec. 11, T. 7S., R. 22E., S.B.M., Los Angeles Land district, the application for which was made May 18, 1910 and allowed June 1, 1912, which homestead entry was on this 6th day of March, 1914, relinquished to the Government of the United States without any consideration whatever therefor.

(Sgd.) P. H. Bodkin.
Patrick H. Bodkin.
(Sgd.) Bella E. Bodkin.

Subscribed and sworn to before me
this 6th day of March, 1914.
(Sgd.) Frank Buren, Register."

16. That on May 2, 1914, the Commissioner of the General Land Office made and transmitted to the Register and Receiver of the Los Angeles land office a letter and order in the following language:

"In reply please refer to:
"H" Los Angeles 010591 J.L.M.
Inc.

DEPARTMENT OF THE INTERIOR
GENERAL LAND OFFICE
Washington.

Address only the Commissioner of
the General Land Office.

May 2, 1914.

Charles E. Wells)
v.) Entry canceled—Case closed.
Heirs of)
Florence V. Bodkin)

Register and Receiver,
Los Angeles, California.
Sirs:

January 3, 1914, the Department directed that Patrick Henry Bodkin, as co-heir with his wife, be allowed to make homestead entry of the NW 1/4, Sec. 11, T. 7S., R. 22E., provided he relinquished his H. E. No. 010652 for NE 1/4, Sec. 11, T. 7S., R. 22E., and in the event of his so doing H. E. No. 010591, for said NW 1/4, made May 18, 1910, by Charles E. Wells should be canceled.

Said decision was promulgated by letter "H" of January 26, 1914, and you were directed to notify Bodkin of his right to proceed thereunder, and this office is now in receipt of H. E. No. 022872, made by Bodkin, March 6, 1914, with his relinquishment of the NE 1/4, Sec. 11, T. 7S., R. 22E.

The homestead entry of Bodkin, No. 010652, for NE 1/4 has been canceled upon the records of this office as of date of March 6, 1914, H. E. No. 010591, of Wells for the NW 1/4 Sec. 11, T. 7S., R. 22 E., has been canceled this day and the case of Wells V. Heirs of Bodkin is hereby closed.

Very respectfully,
(Sgd.) John W. P. Laul (?)
Assistant Commissioner."

4-30 ELB.

17. That on September 22, 1914, Charles E. Wells filed in the land office at Los Angeles, California, his application to contest the homestead entry of Patrick H. Bodkin, as heir and for the heirs of Florence V. Bodkin, deceased, which application was and is in the following language:

(Rubber stamp) "Received, U.S.LAND OFFICE, Los Angeles, Cal.

APPLICATION TO CONTEST

(Note.--This application must be filed in duplicate).

DEPARTMENT OF THE INTERIOR, Serial No.....

United States Land Office. Contest No.....

Los Angeles, California.

I, the undersigned, Charles E. Wells, residing at Blythe, California, being duly sworn, upon my oath state: That I am well acquainted with the tract of land embraced in Homestead entry, Serial No. 022872, made on March 6, 1914, by Patrick H. Bodkin & Wife, as heirs of Florence V. Bodkin, whose present place of residence is Neighbours, State of California, for the N.W.Qr. Section 11, Township 7 S. Range 22 E., S.B.M. Meridian, and know the present condition of the same; that said land is partly reclaimed desert in character; that in so far as I know the said entry is the only proceeding now pending for the acquisition of title to said land except my own; That said Patrick H. Bodkin secured the cancellation of the existing entry of Charles E. Wells,

and the allowance of his own entry as heir of Florence V. Bodkin, by fraud and perjury, he charging Wells with intimidation against Florence V. Bodkin, which charge was accepted by the Department as true, without a hearing to determine its credibility, and that the charge is false in every particular; that I claim an interest in or desire and intend, if permitted to do so, to acquire title to the said land under the provisions of the Homestead law, and state the following facts which show my qualifications to do so: I am not under the age of twenty-one years, I am a citizen of the United States, or have declared my intention to become such, I have not heretofore made any entry which would disqualify me from making entry under the above-mentioned law, I have not since August 30, 1890, acquired title to, nor am I now claiming under any of the agricultural land laws, an amount of land which, together with the land described above, or the part thereof which I desire to enter, will exceed in the aggregate 320 acres, and I am not the proprietor of more than 160 acres of land in any State or Territory; and I further swear that this contest is not being collusively or speculatively initiated, but is being instituted and will be diligently prosecuted in good faith for the sole privilege of acquiring title to said land or some part thereof in my own and sole interest.

I, therefore, ask that I be permitted to prove the allegations made in this affidavit at such time and place as may be named therefor, and that after proving said allegations, and my payment of all the costs

incurred in this proceeding, I be permitted to make entry of said lands or a part thereof under the laws above specified.

I desire that all papers affecting this contest be served upon me at the following address: Blythe, California.

(Sgd.) Charles E. Wells.

(The above document bears a pencil correction, changing the figure 010591 to "022872", in the first paragraph thereof.)

I hereby certify that the foregoing affidavit was subscribed and sworn to before me by the affiant named therein, after it had been read to or by him, in myppresence, in Blythe, Calif., on this 18th day of Sept., 1914, he, the said affiant, being well known to me to be the same person he therein represents himself to be, or having been fully made known to me as such person by ..... of ..... who is well known to me.

(Sgd.) James O. Phillips,
Notary Public. (SEAL)

Also appeared, at the same time and place, A. J. McLaren residing at Blythe, Calif., and S. H. Guthrey, residing at Blythe, Calif., who being duly sworn, depose and say: That they are acquainted with the tract described in the above affidavit, and know from personal knowledge and observation that the statements therein made are true.

(Sgd.) A. J. McLaren.
(Sgd.) S. H. Guthrey.

I hereby certify that the foregoing affidavit was read to or by affiants in my presence before *affaints* affixed signatures thereto; that affiants are to me personally known (or have been satisfactorily identified before me by .....); and that the said affidavit was duly subscribed before me at Blythe, Calif., this 18th day of Sept., 1914.

(Sgd.) James O. Phillips, (SEAL)
Notary Public.

Note: If the application is filed by a person not seeking to acquire title to or claiming an interest in the land, or by one who does not show his qualifications as an entryman, it must be referred to the Chief of Field Division."

18. That on September 22, 1914, the Register and Receiver of the local land office at Los Angeles, California, rejected said application to contest, and endorsed thereon the following:

> "Rejected Sep. 22, 1914 because allegations of contest do not state facts sufficient to constitute cause of action."

19. That notice of such rejection was given to Charles E. Wells, and on October 28, 1914, he filed in the local land office a notice of appeal therefrom to the Commissioner of the General Land Office, in the following language:

"DEPARTMENT OF THE INTERIOR
BEFORE THE HONORABLE COMMISSIONER

Charles E. Wells)
)
vs.) Appeal, Contest 2857 C.A.S.
)
Patrick H. Bodkin) "H" 022872 Los Angeles.
)
and wife.)

Comes now Charles E. Wells and appeals to the Honorable Commissioner from the rejection by the Register and Receiver of the application of Wells to contest the entry of Bodkin.

The decision of the Honorable Register and Receiver is not only an error, but the most grievously possible error, Wells' application to contest alleges fraud and perjury as grounds of contest, and no more sufficient grounds of contest are possible of allegement, or more incumbent on the Department to hear.

Respectfully submitted.
(Sgd.) Charles E. Wells, Contestant."

20. That on November 1, 1914, the Register and Receiver at Los Angeles, California transmitted to the Commissioner said application to contest and notice of appeal, together with a letter in the following language:

"DEPARTMENT OF THE INTERIOR
UNITED STATES LAND OFFICE

022872 Los Angeles, Cal., CONTEST 2857, Transmitting rej. Nov. 1, 1914.
contest & appeal. 8 encls. C. A. S.

Hon.Commissioner General Land Office,
Washington, D. C.

Sir:- We transmit herewith Application of Charles E. Wells to contest 022872 of Patrick H. Bodkin and wife, heirs of Florence V. Bodkin, NW 1/4 sec. 11. T. 7 S. R. 22 E. S.B.M., said contest having been rejected by this office Sep. 22, 1914 and contestant notified by registered mail, evidence of service herewith.

We also enclose appeal of contestant from said rejection filed Oct. 28, 1914.

Respectfully,
(Sgd.) John D. Roche, Register.
(Sgd.) Alex Mitchell, Receiver.
(Rubber stamp) Received Nov. 9 19 G.L.O."

21. That plaintiff was thereupon sworn on his own behalf, and testified as follows:

My name is Charles E. Wells, plaintiff in this action. I reside at Blythe, Riverside County, California, and have for 12 years past. I have been Justice of the Peace since 1915, and Deputy County Assessor and City Recorder for Blythe. I am acquainted with the northwest quarter of Section 11, Township 7 South, Range 22 East; first become acquainted with the land in 1908. I am the Charles E. Wells who

filed the application for a homestead entry on this quarter-section on May 18, 1910. I first arrived in the neighborhood of this quarter section in May, 1908, coming in immigrant wagons with about four or five families. Of my immediate family there was about four married sons and their families, and two single sons, and one daughter. My wife was with me. I established myself at that time near the northeast corner of the quarter, in the county road; it was the county road then, and is yet. From May, 1908 until the date that these lands were open to settlement on April 18, 1910, I remained with my family right there in the road in that camp. On April 18, 1910, I went over the land; over the quarter, with other neighbors, to see if there was anybody else settled on it, and found no one. Touching the matter of settlement, I got ready to make our application and came to the Land Office. The boundaries of the quarter section were fairly well marked on the ground so that they might be readily traced. I remained on the quarter section from the 18th of April until the 18th of May, 1910, and on the latter date I personally filed the application to homestead, which has been introduced in evidence here, in the Land Office here in Los Angeles. After April 18, 1910, I remained on the quarter section until September 15, 1914. During that period, in the way of erecting improvements upon the land, I erected a house, a corral, put down wells, cleared the land,—altogether between 70 and 80 acres. I cultivated 60 acres, beginning the cultivation after my application

was accepted, when I procured water for 60 acres--60 shares of water stock; it cost $26.50 a share. This was in the year 1913. Prior to 1913, and after May 18, 1910, I cultivated some of the land, using only overflow water. I raised a little crop from the waste water from the place adjoining it. I was not enabled to raise crops until after I procured water stock. When I removed from the premises on September 15, 1914, I had 60 acres in cultivation. I had the greater portion of it in wheat and barley. I took the barley off and put in cotton. There was a cotton crop on the land when I was ejected. On 20 acres it was all cotton, and then I had planted cotton on the barley land, after taking the barley off. It was scattered; I did not get a good stand. There was quite a sprinkle of cotton on the other 40. From April 18, 1910, until September 15, 1914, there was no time when I and my family were not there. We resided there continually.

When I went over the quarter on April 18, 1910, I knew Florence V. Bodkin, that is, I had seen her and knew her by sight. Neither she nor anyone else had settled upon the land, and no one made any effort to settle upon that land between April 18, 1910 and May, 1910, except myself. The same acreage, namely, 60 acres, has been available for, and under cultivation since September, 1914.

Mr. Bodkin became possessed of the lands on the 15th day of September, 1914. That is the day I vacated, and for the balance of that year—three and one-half months—he had the use of the sixty acres.

There was a cotton crop on the place when I removed from the land under this judgment on September 15, 1914. I did not pick. I could not say who did. Mr. Bodkin was on the premises. He claimed rent on the premises, and after the cotton was picked my recollection is now that his son and one of my boys that put in this cotton, or helped him put it in, in some way divided the crop. I could not say now what portion of the crop came to me. Very little of it would have come to me at all. I could not say the value of the crop.

CROSS EXAMINATION.

I first came to the vicinity of the land involved in this case in May, 1908. I had four married sons and two single sons, a daughter and my wife, and the four married sons' families. I came from Yuma to Blythe. I did not know the particular tract of land that I was going to locate upon when I left Yuma; I had seen no map of this vicinity before I left Yuma. I procured a map in the Land Office here on the 17th day of June, 1908, and then I found where I was. When I got to this particular community I found other settlers there. I traveled on the county road from Old Palo Verde to where it stopped. I was on that county road; it was a well defined and established county road. The mail traveled it. It was a 60-foot road. I camped several places. I first camped on the northwest corner of it, that is by the road, and some time after that I moved higher up, and I moved east along the road.

near the northeast corner of the quarter where the improvements are now. We did not know where the center line of the road was; it was all brush. It was a well defined county road. During all times during the years 1908 and 1909 and up to May, 1910, I confined our occupation to that county road. I did some work upon the land in the vicinity. I put in a crop on section 2, a cotton crop—or a corn crop —in 1908, I got water from the farmers' ditch on the the northeast corner of the northwest quarter of section 2, township 7. I raised a crop on that land. That would be north and east of me. I made no permanent improvements of any kind on the land involved in this action between May, 1908 and until April, 1910, and continued to reside along side this land in a camp on the county road, in a cornstalk and weed tent. I knew it was Government land. As I said, I got a plat that showed me it was Government land, and I had a right on it. I did not consider I was a trespasser. I had no right and knew that I could initiate no rights to the land. This tract of land on which I raised a crop was Government land that had never been filed on. I did not consider I was a trespasser anywhere on Government land. I was an American Citizen. I do not remember just what time I cleared any brush on this northwest quarter of section 11. I cleared brush on it all the time, more or less. When I had nothing else to do I put in my time clearing the land and cutting brush. I cleared on this quarter section, too.

I don't remember when I first began that clearing, but it was not prior to 1910. I raised my first crop on this northeast of 2, in 1908. I put down a well on this quarter section, one in 1908, and in 1910, after I made settlement on it, I put down a cased well, both on this quarter section, but the first one was in the road, as I said. In 1910, I built a horse corral there, and put the second well down in the corral. I first acquired a water right for this land after my filing was accepted in 1913. Prior to acquiring that water right, I had raised a little on some overflow from waste water, as I said before. I think it was in 1908 that I first cultivated the land by the use of waste water, about 4 or 5 or 6 acres. That was the only time I used waste water. We never got any more. I bought water stock after my filing was accepted; I used waste water only that one year. We didn't have any water in 1909. The water right for the 60 acres cost me $26.50 a share—an acre.

On May 18, 1910, when I appeared at the Land Office to make an application to file upon this land, I think I met Florence V. Bodkin at the Land Office, also. I had met her before that, but I did not know that she was claiming a preference right to file upon this land by virtue of a contest that she had filed against the Geiger entry. I would like to explain: I think the first time I ever saw Mr. Bodkin was in June, 1908. He told me that I was living on his daughter's land, and I said: "Oh, no, Mr.

Bodkin, I am living on Government land." That was on the 17th day of June, 1908, in the Land Office. He told me I was on his daughter's land. I said, "No, no, Mr. Bodkin; I am on Government land." I had a plat in my hand then. I didn't know when I made my application on May 18, 1910, that Florence V. Bodkin had made an application to file upon the same quarter-section. I didn't know what she was going to do. As a matter of fact, I don't know that she made her application on that day, before I made mine. I don't know of my own knowledge.

REDIRECT EXAMINATION.

After May 18, 1910, I erected a residence on this quarter-section; a house 16 x 24 feet, with a porch on it, made of native material—willow poles and adobe, except the floors and windows and doors, which were shipped from Los Angeles, and were made of pine. They were regular doors and windows and a pine floor. The house was roofed over 3 or 4 deep. There were two main rooms and it was porched on three sides, and there was a second well under the porch. That was the third well I put down. I, with my wife and children continued to reside in that habitation until we were ejected by an order from the Superior Court of Riverside County. These wells I speak of, two of them were drove wells, 20 feet deep, and one was a cased 6-inch well, to 60 feet deep. By a "drove" well, I mean a well that is driven down to the water with a sand

point. I raised water by a suction pump, and applied the water to supplying 20 head of horses and for domestic use. We were freighting, and a lot of the other neighbors were freighting, and they all used that well. It was in the road, as I told you. After I filed my application, I sank a cased well by the corral, after I built a wire corral about 6 x 10 rod or something like that in dimension, may be 15 rod, and 6 foot high. The diameter of the well was 6 inches; and that well furnished us with sufficient water for household and domestic and stock purposes.

RECROSS EXAMINATION.

I was put off that Government land as a forcible detainer by the Superior Court of Riverside County. I was ejected. I filed a bond to appeal, I considered it hopeless to do it. I never followed up the appeal; that was as far as it got.

CROSS EXAMINATION—Resumed.

I cleared a patch on the southeast corner where the water was wasting on in 1908; I raised a little crop on the corner of it from waste water that Mr. Edwards ran over there. Otherwise, I never occupied that property, not to make any claim to it.

Q. I show you a document entitled "Department of the Interior, Washington", under No. D23027, entitled "Charles E. Wells vs. Florence V. Bodkin", Los Angeles, 010578, 010591, application for rehear-

ing; affidavit showing no cause for re-opening; affidavit of C. E. Wells bearing date the 21st day of August, 1913," and ask if that is your signature; (handing papers to witness).

A. Well, sir, I couldn't say that it was.

Q. This document appears to have been sworn to before Jess I. Bodkin, a notary public.

A. Yes. I don't think I signed that affidavit.

REDIRECT EXAMINATION.

Q. Mr. Wells, will you look at that signature on the document handed you by Mr. Noland?

A. It looks like my signature, but I wouldn't be positive. As I say, I don't remember ever making an affidavit before Jesse I. Bodkin. That looks like my signature, I say, but I don't recall it. I don't remember having filed an affidavit with the Secretary of the Interior on the application of Mr. Bodkin for a rehearing. I can't say positively that I did. I say I don't remember ever signing a document before Jesse I. Bodkin. I don't deny that that is my signature, but I don't say that I signed that signature there. I say, I don't deny the signature.

Thereupon defendant offered, and there was received in evidence the document referred to in the above testimony, which document was marked Exhibit A, and is in the words and figures following, to-wit:

"DEPARTMENT OF THE INTERIOR
WASHINGTON

D-23027

Charles E. Wells) "H"
) Los Angeles 010578, 010591,
vs.) Application for re-hearing,
) affidavits showing no cause
Florence V. Bodkin) for reopening.

(Rubber stamp) Dept. of the Interior, Received Sep 18 1913 to Genl. Land Office, Secy's Off.--Mails & files.

(Rubber stamp) Dept. of the Interior, Received Aug 28 1913 to Genl. Land Office, Secy's Off,--Mails & files.

AFFIDAVIT OF C. E. WELLS.

C. E. Wells, being duly sworn, on his oath says, that he is the C. E. Wells that made application to file on the N.W.¼ of Sec. 11, T. 7 S., R. 22 E. S.B.M., that he lived upon and occupied the land prior to the proclamation of the Secretary of the Interior of Jan. 10, 1910, that his intention in so residing on and occupying the land was to file a homestead upon the same in the event the Government did not require the land for purposes of the withdrawal, and should therefore restore the land to entry, that there was no law against such occupation and improvement, made with the understanding and at

the risk assumed of loss to the Government, should the Government require the lands for the purposes of the withdrawal, that at the time of such settlement he posted notice on the land specifying that such settlement was made subject to the action of the Government under the provisions of the Reclamation Act, that the land being subject to a first form withdrawal, the conditions of which specified that the lands were "not subject to any form of disposition" while subject to such withdrawal, he therefore expected to secure no priority by reason of any acts of his prior to restoration, and he felt sure that no one else could secure such priority prior to restoration, that he settled upon and improved the land from information contained in a township plat purchased from the Los Angeles Land Office which is hereby made a separate exhibit, "A" and which shows this land at that time to be vacant public land, and knowing that the status of the land was such that no priority could attach during the pendancy of the first form withdrawal, he expected no priority by settlement under the law of May 14, 1880, for he was aware this provision of the law concerned only open land, and he merely claimed the right to maintain his settlement and occupation subject to the future disposition of the land by the Government. That being informed by one Patrick H. Bodkin that notwithstanding the status of the land, his daughter Florence V. claimed a priority to file on this land, he, (Wells) made overtures to her to purchase her

waiver of such supposed right, not because such right was believed to exist, but merely through courtesy to the girl, that she replied with these identical words, 'You will have to see Papa', that believing the girl, who seemed to be under the complete domination of her parents, had performed no act in connection with said suppositious right of her own initiative, he refused to confer with any third party concerning such right, preferring to stand on the known status of the land.

That Florence V. Bodkin was the companion and playmate of his daughter, and friendly with every member of his family and his neighbors families, not sharing the 'Antagonism' assumed by other preference rights claimants, that she was at the time in delicate health, unable and indisposed to undertake such separate living as 'settlement' would entail, that the affidavit of one Fleisher, and he, Wells, would have attacked this young, delicate and friendly disposed girl, is as preposterous as to say he would have attacked his own daughter, that the advices acted upon by this bunch of contestants, including the father of Florence V. Bodkin, was that they did not have to make settlement at that time, and in fact, they did nothing then and have done nothing since, including the father of Florence V. Bodkin, that they did not have to do to show a pretense of good faith.

That it is not possible to suppose that this delicate daughter, at the time but a short journey from the

grave, intended to exceed in zeal this entire contesting community including her father, and establish a residence herself in advance of the time at which they considered themselves forced by the failure of further fortunate withdrawals, to make a pretense of settlement.

Deponent protests against the serious consideration of a charge which is so obviously an afterthought, due to the discovered insufficiency of the former plea of vested right, and deponent calls attention of the Honorable Secretary to the fact that had such alleged intimidation been true, or the parties making the complaint sincere, the charge would have been made at first and not as a last resort, and that not having been made during the regular hearing of the case, can not now be cited as grounds for error in making decision, or as cause for ordering a re-hearing, and is in fact, merely trifling with the Department. He states that the slanderous allusion to 'previous settlers' is unworthy of reply.

(Sgd.) Charles E. Wells.

Subscribed and sworn to before me
this 21st day of Aug. 1913.
(Sgd.) Jesse I. Bodkin, (SEAL)
Notary Public in and for
Riverside County, State of California.
My Commission expires April 22, 1917.

Note: Copies of Appellant's affidavits was received by me Aug. 17th, 1913. (Sgd.) Charles E. Wells."

22. That Robert Culpepper, a witness called on behalf of the plaintiff was then sworn and testified as follows:

DIRECT EXAMINATION.

My name is R. L. Culpepper; I reside at Blythe, and have resided there since 1909. I am a farmer by occupation, and have been farming since 1909 in the Palo Verde Valley. I am acquainted with the Northwest quarter of section 11; first becoming acquainted with it in the summer of 1909, when I got acquainted with Mr. Wells and his family. It looks like about 60 acres that Mr. Wells had cleared and cultivated after 1910. I carried on farming operations in that neighborhood.

I knew Mr. Wells, the plaintiff, in April, 1910, and knew where he was located on the 18th of April, 1910. He was on the quarter-section of 11 involved in this action, and he had with him on the land, his family. After May 18, 1910, I observed what improvements Mr. Wells made and erected on the premises. He built a house there and a corral, and began clearing up this land, grubbing it, clearing the brush off. I lived about a half a mile from him during the time from 1910 to September, 1914. I was there continuously; I would see Mr. Wells sometimes two or three times a week. I would see some of the family nearly every day. Until he moved off, sometime in 1914, he had been residing there on the land continuously. He had cleared, during that time, about 60 acres, I would judge, and he had all of the 60 acres

under cultivation. He had had the water stock for it. He had a lot cleared up that he didn't take water stock for, and didn't cultivate. There was a cotton crop planted upon the 60 acres in the fall of 1914, and that crop was standing when he moved off.

CROSS EXAMINATION.

I first came into this community in 1909. At that time Mr. Wells was on this quarter-section we are talking about; living right there in the road, right close to the line. He had a little shack put up there made out of weeds and cornstalks, the first time I was ever at his place. I was not there in 1908.

23. That William B. Edwards, a witness called on behalf of the plaintiff was then duly sworn and testified as follows:

DIRECT EXAMINATION.

My name is William B. Edwards and I reside at Redlands, California. I am acquainted with the plaintiff, Charles E. Wells. I think I first became acquainted with him in the month of May, 1908. I am acquainted with the Northwest quarter of section 11, township 7 south, range 22 east, involved in this action. I first became acquainted with that quarter-section and the neighborhood in December, 1902. In May, 1908, when I first met Judge Wells, I was living on the quarter-section just east of the northwest quarter—the adjoining quarter. I noticed at that time where Judge Wells and his family had located themselves. It was on a section line running east and west, as near as we knew the line at that

time. He was living in a small tent; it would be on the right-of-way of the county road. I am familiar with the road right-of-way there; it is now laid out and marked by boundaries. At that time Mr. Wells was at the northeast corner. I had put in alfalfa to the northwest corner of my place, and he was just off my northwest corner. I had run out the line as well as I could establish it then. My north line would be the road line, which followed the section line, and he was just over the line on the road right-of-way. He continued to remain at that spot until the 18th of April, 1910, when he moved over on to the land and built a house of poles and adobe, the usual construction in that country. It had two large rooms and a porch on two sides, and that was a substantial building for that community. It was not one that the wind would blow down. It was much better than a great many other habitations erected in that community. With Judge Wells in that residence lived his wife, daughter and two sons at least. I don't know whether there were any more than that stayed there ordinarily. I observed what he did with reference to the land after May 18, 1910. I had some barley in on that southwest quarter of mine, and the water overflowed at the lower end, and he helped me put in mine, and in discing across he disced across as far as the water went and put it all into barley. After May, 1910, he cleared, altogether while he was on there, about 60 acres, and after he got water stock, he had in about all that was cleared, about 60 acres.

There was a couple of years there that he and I together extended the crop over on his land; and after he got water stock he put his in independently. When he moved off the premises, he had in cultivation about 60 acres, which he had been cultivating for about two years before he moved off. I was there in the neighborhood on the night of April 17 and the morning of April 18, 1910. At that time I knew Florence V. Bodkin and knew her father, Patrick H. Bodkin, and her mother. I saw the plaintiff, Charles E. Wells on that occasion. During the first hours of April 18, 1910, we both walked over that quarter-section, and the quarter-section I lived on, too, around the outside boundaries, and I did not observe anybody anywhere on the Wells quarter-section. I remained in that vicinity during the next 30 days and during that time I did not see anybody, other than Judge Wells and his family, settling on or attempting to settle on that quarter-section. I know that Florence V. Bodkin was there in the neighborhood at that time. She was in her father's house, which consisted of a store building just south of there. This store building was not on this quarter-section; it was on a quarter-section to the south,—the southeast quarter of section 11, that not being the quarter occupied by me or by Judge Wells. The property on which the store building was located was that of Mr. Neighbours. That store building was the Bodkin home in the valley, and Miss Bodkin was residing there with her parents.

CROSS EXAMINATION.

In 1908, I was residing on the northeast quarter of section 11. I had planted some barley during that year in the southwest corner of my tract, and it was in that year that I first met Mr. Wells. He was residing on the north line of that quarter-section just west of my land, when I met him. The county road was laid out at that time. It was not surveyed, but it was laid out roughly, the usual width of a county road, about 60 feet. That would be thirty feet on either side of the line given for county roads. There were no fences along it. This crop that I said Mr. Wells raised with waste water from my land was on some of the land next to the southwest corner of my land, and on the southeast corner of the quarter-section occupied by Mr. Wells. He put in just a small patch, and I think he raised crops there from my waste water for a couple of years, in 1908 and 1910. I don't think he used that waste water in 1910.

Mr. Wells moved over and built a house the 18th of May, 1910, a little farther south from where he was first located, and possibly, a few feet farther east.

24. That Harry E. Wells, a witness called on behalf of the plaintiff was then duly sworn, and testified as follows

DIRECT EXAMINATION

My name is Harry E. Wells. I reside at Blythe and am the son of Charles E. Wells, the plaintiff.

I have lived in the Palo Verde Valley about 12 years, going there at the time my father went. I am one of the married sons that arrived there with him. We arrived in the Palo Verde Valley in May, 1908, and located at that time on the northeast corner. He erected a tent and shed on the road. My father remained in that spot about two years, until he filed his homestead application. During that two years I was living about two miles north and east. After May 18, 1910, my father cleared up about 65 or 70 acres, and built a house, we called it a stick-in-the-mud, consisting of two rooms. This house was about the same as other habitations in the community. He also had a corral, a pump and well, and he cultivated about 60 acres of the land after 1910, and there were 60 acres in cultivation when he left the possession of the property. It was planted to cotton at the time. I was there in the valley on the night of April 17th and the morning of April 18, 1910, but I was not near my father's habitation on that night; I was at my own place. I suppose I was on my father's quarter-section between April 18th and May 18th; I did not see anyone else on the land or in possession of the land during that time other than my father.

CROSS EXAMINATION

I was with my father when he first came to this land in May, 1908. I did not know Mr. Edwards at that time, but became acquainted with him soon after. At the time we came there, Mr. Edwards lived about a half a mile east. My father established his

abode on the north side of the place, in the road, when he first came upon this land. It was, probably 200 feet from the northeast corner of the property and right along the north line. My father located about 25 feet south of the north line and about 200 feet west of Mr. Edwards' west line. The road that I have spoken of, extended east and west along the north line of the property in question.

25. It was thereupon stipulated by counsel for the respective parties that the value of the use of the lands here involved during the years from 1914 to 1920, inclusive, was the rental value as testified to by the witness, Robert L. Culpepper, who testified as follows:

I carried on farming operations in the neighborhood of the lands in question and I am familiar with the rental value of farm lands such as these occupied by Mr. Wells during the years 1914 and onward. I have rented lands from others in that neighborhood, and I know of other persons renting lands and the amount of rent they paid for the use of such land. I know of one piece right in section 12 that rented for $10.00 and $14.00, cash rent. The average cash rental value of such lands during the year 1914 was about $10.00, gross. The net value would be about $5.00.

During the year 1915, the net rental value of such lands would range about the same up until 1917. I would say the net rental value was about $7.50 per acre, per year. Afterwards, 1915 and 1916, it would

be worth about $7.50 an acre to the owner. In 1917, it went up and was worth $12.50 an acre. For the year 1918, it ran up, and the net rental value was $22.50 an acre. In the year 1919 it went up, and there was a lot of land that rented for $50.00 cash, per acre, which, with $7.50 off, would leave the net rental value at $42.50. For the year 1920, the rental value was about the same as in 1919.

26. Plaintiff introduced in evidence the portion of the contest docket kept in the Los Angeles Land Office, containing entries of all proceedings relating to the contest application of Charles E. Wells against Patrick H. Bodkin, and wife, as heirs of Florence V. Bodkin, No. 2857, which entries were and are as follows:

022872

"TITLE OF CASE CONTEST NO 2857
Charles E. Wells vs Patrick H. Bodkin & Wife
as heirs of Florence V. Bodkin

Blythe, Cal.

Number and Kind of Entry	Date of Entry
022872 H. E.	Mar 6/14

DESCRIPTION OF LAND	SEC-TION.	TOWN-SHIP.	RANGE.	AREA
N. W. ¼	11	7S	22E	

DATE	MINUTES OF PROCEEDINGS
Sept 22 1914	Application to contest filed.
Sept 22 1914	Rejected.
"	Contestant notified by reg. mail. Reg. receipt Oct 9/14.

Oct 28 1914 Appeal filed.
Oct 31 1914
Nov 1/14 All papers to G. L. O."

27. Plaintiff thereupon rested his cause.

28. That thereupon defendant Patrick H. Bodkin was sworn on his own behalf and testified as follows:

DIRECT EXAMINATION.

My name is Patrick H. Bodkin, and I am one of the defendants named in this action. I am acquainted with the Northwest quarter of section 11, township 7 south, range 22 east, S. B. M, and have known that land since about the middle of January, 1908. I can't quite recall when I first met Mr. Wells, but it was somewhere about the middle of 1908. I moved into the valley in October, 1908, and met Mr. Wells soon after I moved in. Mr. Wells was there when I moved into the valley; he was living on the northeast quarter of this section in controversy. He continued to live there about two years. I meant to say that he was living on the northeast corner of this quarter-section,—not the northeast quarter. From there he simply moved his residence a short distance to the south from where he had been living on the same tract of land. At that time I lived about a mile away. I had occasion to observe what Mr. Wells did upon that land from 1908 to 1910. I used to drive through there quite often, going to Blythe. I think in 1908 he had cleared five or six acres in the

southeast corner of this quarter-section and had it in barley. He occasionally did quite a little bit of clearing—chopping down trees and burning brush. In 1908, when I first saw Mr. Wells' house it was located on the south side, south of the road 20 or 30 feet, I should say, judging by a subsequent survey of the Government, locating that road. The road was not located then. There was no county road there, laid out there, in 1908; it was not laid out properly until the Government survey of lines in 1917. Mr. Wells' house, I should say, to the best of my belief, was 15 or 20 feet south of the road, because we used to drive by on the north side, and I remember the distance between his house and the north line. In 1910, he built a new house south and east from where he had formerly lived.

I went on this tract of land on March the 25th, 1914. Mr. Wells was living upon the land at that time. After my filing, I just moved over. I lived across the road, and I moved over. Mr. Wells left the place under the force of my ejectment suit, filed in the Riverside Court some time, I think, in August, 1914. I have resided on the land ever since and my wife has resided there with me, and I have paid all the taxes that have ever been levied against the land since that time.

CROSS EXAMINATION.

Q Where is the road on the north line of section 11 located with reference to the line?

A The direct line as surveyed by the Government would move the fence about thirty or forty feet north of where it is now.

I know where the line on the north edge of section 11 is on the ground, and where it was in 1908.

Q Now, with reference to that line, where was the county road located nearby?

A There is no county road there.

Q Isn't there a road there now?

A There is a road there now, yes, sir, but it is not on the direct line.

Q Is there no county road?

A No sir; nobody has deeded any land along there to the county to make a county road.

Q Oh, I see. You are offering a conclusion. There is a road there, however?

A Yes sir.

There was a road there at the time Mr. Wells was living on the ground, it was a straight road. I don't know whether it had more than one set of wagon tracks on it, I don't think it did. It was just a blazed road through the brush, made principally by driving vehicles over it. It's width was about 30 feet. That country was covered more or less with brush and some shrub trees in 1908. Mr. Wells' first habitation was about 30 or 40 feet south of the wagon tracks making this road we speak of. Since Mr. Wells moved off that spot, the Government has laid out a road, but the road is not where the Government designated it should be. The road designated

was 60 feet wide, half on one side of the line and half on the other. The road is now being used by vehicles.

Q With reference to the spot where the wagon tracks were in 1908, where are the wagon tracks now being used?

A About the same place.

There is no evidence left of the old habitation first erected by Mr. Wells. Nearly all of the present road is off of this quarter-section that we are talking about. Mr. Wells' first habitation was about 30 feet south of the wagon track, of the road used at the time.

Q BY THE COURT: And where was the wagon track then with relation to the north line of the quarter-section?

A You mean the north line at that time, Judge?

Q Well, the north line hasn't been changed, has it?

A Yes sir.

Q The north line of the quarter-section?

A Yes sir, decidedly; by about 20 feet.

Q Well, then give it to us in both places; where was it then and where is it now?

A Well, then it was—What was your question?

Q Where was the road with relation to the north line of the quarter-section?

A It was somewhere near what was supposed to be the line of the quarter-section.

Q All right; and now where is it?

A It is 40 feet to the north.

Q That is, the line has been moved 40 feet to the north?

A Yes, sir, the line, by the Government.

Q BY MR. WILLIS: So that the spot then occupied by Mr. Wells is now 40 feet further removed from the actual north line than it was then?

A Yes, sir.

Q But the traveled road remains in the same spot?

A Yes, sir.

Q Was that line, as you say, moved 40 feet, the result of the recent survey by the Government?

A Yes, sir; 1917; the same survey which changed the description of this quarter-section to tract No. 78. In making that survey and laying the line, that located the north boundary line some 40 feet farther north than occupants and settlers theretofore had placed it. The survey shifted the whole section and adjacent sections 40 feet to the north.

29. Defendants introduced in evidence during the oral examination of Patrick H. Bodkin, tax receipts issued by the County Tax Collector of Riverside County, California, showing payment by defendant, Patrick H. Bodkin, of all taxes levied against the lands here involved since the same had been placed on the tax rolls of said county, and being for the fiscal years of 1918-19, and 1919-20, in full. And in connection therewith the following letter of C. R. Stebbins, County Tax Collector of Riverside County, California, dated March 24, 1920, addressed

to Dan V. Noland, attorney for defendants, was introduced in evidence, to-wit:

"Dear sir: The northwest quarter of section 11, township 7 south, range 22 east, was not placed upon the rolls of this county until the year 1918. It has been assessed the last two years to P. H. Bodkin, no other name appearing than his, and taxes have been paid, except the last installment of 1919. Yours truly, C. R. Stebbins, County Tax Collector. CRS/MH."

30. Defendants thereupon introduced in evidence a certified copy of an amended complaint filed on October 3, 1918, in the Superior Court of the State of California, in and for the County of Riverside, entitled, "Charles E. Wells, plaintiff, ve. Patrick H. Bodkin and Arabella Bodkin, his wife, defendants", No. 8364, for the purpose of showing that the possession and occupation of the lands by the defendants was recognized by the plaintiff to be adverse and hostile, he having commenced an action at that time endeavoring to recover possession of the property.

31. It was stipulated and agreed between counsel that after the issuance of final certificate to defendants in 1916, plaintiff, in August, 1917, commenced an action in the State Court at Riverside against defendants to establish a trust in, and to quiet title to, and for the recovery of possession of the lands here involved, and that on October 3, 1918, he filed the amended complaint in said action hereinabove mentioned, in which he sought to have it established and

declared that defendants held said certificate for a patent and said lands in trust for plaintiff and that recovery of possession be had; that said action was dismissed by plaintiff on February 13, 1920, prior to filing of the complaint herein.

32. F. F. Nelson, a witness called on behalf of the defendants, being duly affirmed, testified as follows:

DIRECT EXAMINATION.

My name is F. F. Nelson, and at present I reside in Beaumont. I have lived in the Blythe country. I went there March 13, 1902 and resided there until May 2d or 3d, 1913, excepting three summers that I went out to work three or four months each summer, during the years 1903, 1904 and 1905. I knew Mr. Bodkin and Mr. Wells in the valley. I first met Mr. Wells some time in May, 1908, either at my own place or—at either the south or east line of my quarter-section where we resided then. I had a conversation with Mr. Wells in regard to this northwest quarter of section 11, township 7 south, range 22 east. We had a number of conversations about it at various times. When he first came, I think he asked me where he could locate on a piece of land. I think just he and I were present, as nearly as I can remember, and I think it was the first time that I met Mr. Wells. We met either on my south line, in the road, or what we supposed was the road, or my east line. As near as I remember the conversation I had with Mr. Wells, it was something like this: He asked me

where there was any land that could be located. I told him I didn't know of any because the Reclamation had withdrawn the land—or the Government had withdrawn the land for the Reclamation Service; and he said, "Isn't there any land here that is delinquent?" I said, "Yes, there is probably some, but I don't believe you can do anything with it, because it is Government land, and it is withdrawn from the Reclamation Service—that is, by the Reclamation Service." I think that was our first conversation that we had about the land. I had several conversations with him at various times. It is so long since that I couldn't hardly locate it just where I was, nor what they were; but the gist of th business, as I understand it, would be that these lands were withdrawn and could not be entered, but Mr. Wells nevertheless went and located on the land.

Q Did Mr. Wells ever at any time say anything to you in regard to himself and the other persons out there commonly designated as squatters?

A Well, it was generally understood there that they were squatters, several of them. There was a number of them. And that was the understanding of all of us, that they were squatters there, and whether I spoke to Mr Wells about him being a squatter or not, or he spoke to me,—it appears that he did, but I am not positive as to that. I think he spoke to me one time at the school house at an election we had there that he and several others were squatters on this land, and at that time they said they

were going to have the land, that they were going to get it, which I didn't believe they could, and Mr. Wells and I always had that same argument, that they would never acquire title to that land by virtue of settlement, and he argued one way and I argued the other. At that time, at the first meeting, he hadn't located in any particular place, as I remember. Subsequently he located on the north line of the northwest quarter of section 11, where he resided for some time; in fact, he was there when I left the valley. He did work on that land, considerable work there in 1908. And I don't remember what kind of a crop he raised in 1908, but I know he had some barley in in the spring of 1909. At the time I left the valley Mr. Wells was still residing in that same place.

CROSS EXAMINATION.

Q Now, you speak of these people being dubbed as "squatters" down there. Wasn't that term applied to them by those who were seeking and receiving preference rights by virtue of contests.

A No, I don't think that we ever—I can't tell you as to that now, but it was generally believed that they were squatters, by all of us that resided there at that time—Mr. Hickey and myself and Mr. Neighbours and Mr. Longworth and several others —that they were squatters on this land.

Q And you, on the other side, were what was called a preference-right man?

A No sir.

Q You sided with the preference-right people, though?

A I did because I thought they were right. Mr. Wells and I had a number of friendly arguments about it, and we talk about things yet, just as friendly as we did the first time we met. The preference-right people called Mr. Wells and his friends "squatters", I suppose. I couldn't tell you. It is so long since, I couldn't mention anyone who called them "squatters", but it was generally understood by all of us that they were. I did not have any preference right myself, and I did not contest anybody, I had my own entry, I filed on the land in 1902, and proved up on it, without contest.

REDIRECT EXAMINATION.

I know that the land in controversy had been claimed by someone else before Mr. Wells came there. Most of that land in that vicinity had been taken up before the Reclamation service—that is, before the United States had set it apart for the Reclamation service, and every one of those claims, as near as I can remember, had a little shack on it. Someone testified here that they were "stick-in-the-mud." And there was a little shack on the southwest corner of that quarter. The sticks were there, and nailed on, and when I came there, there was two pair of pants or overalls, I don't recollect now which, and a pair of shoes or two, and a coat hanging on this shack, and it remained there for, I think, a number of years, I can't just tell you when,

and then it disappeared all at once. I was there in 1902, and I filed on my homestead entry in 1902, and on a desert entry that corners with this land. This quarter-section in question was known as the Geiger claim. It cornered with mine. When I was testifying that some one else claimed the land, I referred to the Geiger claim. Geiger claimed the land. I understand all that land had been taken up years before by Geiger and had been canceled by the Government.

33. James E. Neighbours, a witness called on behalf of defendants, being duly sworn, testified as follows:

DIRECT EXAMINATION.

My name is James E. Neighbours. I live at San Jacinto. I lived in the Blythe country, having moved down there in 1904, and stayed there until 1908. I knew Mr. Bodkin in the valley and knew where he lived. I knew Mr. Wells, and am acquainted with the northwest quarter of section 11, township 7 South, range 22 east S.B.M. I first became acquainted with Mr. Wells in May, 1908. Prior to that time this quarter-section referred to had been known as the Geiger claim, and there was evidence of it having been occupied; there was a shack on the southwest corner of the quarter. When Mr. Wells came to that country, he located near the north line of the northeast corner of this northwest quarter. After he located there, he did some little clearing in 1908, and I think there was a little crop on one

corner in 1908. In 1909 there was probably about six acres of barley. I left in the fall of 1909 and returned in 1913. He was there in 1909, when I went out, and he was still near the same place in 1913 when I came back.

34. Thereupon the cause was submitted to the Court for consideration and thereafter, to-wit, on April 18, 1922, the Court filed its conclusions in words and figures, to-wit:

"E-51 EQUITY.

Henry M. Willis, Esq., of Los Angeles, California, Attorney for plaintiff.

Dan V. Noland, Esq. of Los Angeles, California, Attorney for defendants.

MEMORANDUM OPINION

Bledsoe, District Judge:- In this case, after having been given very careful consideration to the facts involved and the contentions advanced, I am persuaded that the bill of plaintiff should be dismissed. Upon the facts, the case is essentially dissimilar from that of Edwards v. Bodkin (249 Fed. 562: 265 Fed. 621) heretofore tried in this court and referred to frequently in the argument. In the Edwards case, Edwards himself was the original entryman and the preference right sought to be relied upon as a defense to his suit was a right granted to the defendant therein arising out of a contest of Edwards' entry initiated by the defendant. The Circuit Court of Appeals in considering the case held

that a mistake of law had been made in sustaining Bodkin's contest and in addition, that the preference right upon which Bodkin relied had not actually been made use of by him in that the land secured and with respect to which the controversy was waged was obtained through the employment of scrip, etc.

Herein, the original locator, one Geiger, is not before the Court and the correctness of the ruling of the Department of the Interior with respect to Florence V. Bodkin's contest of his entry is conceded. The patent relied upon and which it is the object of the suit to nullify was obtained solely through the use of the preference right accorded to Florence V. Bodkin in virtue of her successful contest. The case, therefore, in my judgment, is ruled in all its substantial aspects by the decision of the Supreme Court of California in McLaren v. Fleischer, 181 Cal. 607, affirmed on appeal by the Supreme Court of the United States. (U. S. Adv. Ops. 1920-21, p. 674.)

Plaintiff seeks to differentiate the cause herein from the McLaren case by insisting that a mistake of law was indulged in by the Department of the Interior in ruling favorably to defendants herein upon an ex parte application with respect to a charge of threats and intimidation, etc., asserting to have been employed by plaintiff Wells against the entryman Florence V. Bodkin and that Florence V. Bodkin's death, previous to the consummation of her entry of the land in pursuance of the preferential

right accorded to her, served to invalidate such preference right in so far as her father and mother were concerned,and that in consequence there could be no inheritance by them or either of them of the right thus granted to her. I am persuaded, however, that the ruling of the Department to the effect that such a right was inheritable by the heirs of the entryman, pursuant to the terms of the Act of July 26, 1892, was a reasonable construction of that Act, and I am also persuaded that the defendants were permitted to consummate the entry of their deceased daughter, not because of any alleged threats or intimidations employed against her by plaintiff, but because of the fact that the defendants had rightfully inherited the right to consummate the entry of their deceased daughter and that to allow such entry to proceed to patent, was but the lawful recognition of a valid right inuring to the heirs and in no wise dependent upon the employment of any asserted threats of intimidation. In other words there was no occasion to pass upon the question as to whether threats or intimidation had been employed and therefore this question was not passed upon by the Department and therefore there was no mistake of law committed as asserted by the plaintiff.

For these reasons a decree in the usual form will be entered, dismissing the bill of complaint.

April 18, 1922."

35. Thereafter, to-wit, on May 5, 1922, and in pursuance of said conclusions, the Court entered its

Decree in favor of the defendants and against the plaintiff, dismissing the cause, which decree was filed with the Clerk of said Court and duly entered on May 5, 1922, and is in words and figures as follows:

"No. E.-51 Equity

DECREE

On the 14th day of February, 1921, the above entitled cause was submitted to the Court, and the Court being duly advised in the premises, thereafter, on the 18th day of April, 1922, handed down its opinion, and, on its own motion, and in accordance with said opinion, ordered that a Decree of Dismissal accordingly be entered herein:

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the above entitled cause be and the same is dismissed.

Dated this 5th day
of May, A. D. 1922. Benjamin F. Bledsoe.
U. S. District Judge.

Decree entered and recorded May 5, 1922.
Chas. N. Williams, Clerk.
By Douglas Van Dyke, Deputy Clerk."

36. Thereafter, to-wit, on the 31st day of July, 1922, plaintiff filed his petition for appeal and assignments of error, which are in words and figures as follows:

"E-51 Equity

PETITION FOR APPEAL

To the Honorable Benjamin F. Bledsoe, District Judge:

The above named Charles E. Wells feeling aggrieved by the decree entered in the above entitled cause on the 5th day of May, 1922, does hereby appeal from said decree to the Circuit Court of Appeals for the Ninth Circuit for the reasons set forth in the Assignment of errors filed herewith, and he prays that his appeal be allowed and that a citation be issued as provided by law, and that a transcript of the record proceedings and document upon which said decree was issued. duly authenticated, be sent to the United States Circuit Court, under the rules of such court in such cases made and provided.

And your petitioner further prays that the proper order relating to the required security to be required of him be made.

Henry M. Willis
Attorney for Petitioner."

"E-51 Equity

Assignment of Errors.

Now comes the plaintiff in the above entitled cause and files the following assignment of errors upon which he will rely upon his prosecution of the appeal in the above entitled cause, from the decree made by this honorable court on the 5th day of May, 1922.

That the United States District Court for the Southern District of California, Southern Division, erred in the following particulars, towit:

1. The Court erred in not holding that the officers of the Land Department made a mistake of law in deciding that a preference right of entry became vested in Florence V. Bodkin as a result of the successful termination of her contest of the Geiger entry at a time when the lands involved were withdrawn from all forms of entry under the Reclamation Act.

2. The Court erred in not holding that no right, either preferential or otherwise, to enter upon any public lands, could be lawfully acquired while such public lands were withdrawn from all forms of entry under the Reclamation Act.

3. The Court erred in not holding that the officers of the Land Department made a mistake of law when, on January 3, 1914, on the application of defendants, and without a hearing or trial, they directed that defendant, Patrick H. Bodkin, as father of the deceased Florence V. Bodkin, be allowed thirty days to elect whether he would relinquish his then homestead entry upon other lands, and make, with his wife, the defendant Arabella Bodkin, as his co-heir, a homestead entry upon the land, based on the application of Florence V. Bodkin, and directed that in the event of his doing so, the homestead entry of plaintiff should be canceled

4. The Court erred in not holding that the regulations of the Secretary of the Interior of January 19, 1909, vacated and annulled any right that may theretofore have come to Florence V. Bodkin by reason of her contest of the Geiger entry, and its

cancellation on July 1, 1908, and notice thereof on the same date to said Florence V. Bodkin.

5. The Court erred in not holding that the officers of the land department made a mistake of law, when, on May 2, 1914, they canceled the homestead entry of plaintiff, theretofore allowed on October 14, 1913, and permitted the defendants herein, as heirs of Florence V. Bodkin to make a homestead entry on the land.

6. The Court erred in not holding that whatever preference right the said Florence V. Bodkin had acquired by virtue of her contest of the Geiger entry had been used and exhausted by her homestead application of May 18, 1910, and was not thereafter inheritable.

7. The Court erred in not holding that the defendants were incompetent to inherit the homestead rights of said Florence V. Bodkin, at her death on March 25, 1912, by reason of said heirs being then and there homestead entrymen on other lands under the homestead laws of the United States.

8. The Court erred in not holding that plaintiff had acquired a settler's right by reason of his settlement on the land on April 18, 1910, followed by the filing of his homestead application thereon on May 18, 1910, and that his settler's right so perfected was superior to any claims of said Florence V. Bodkin by virtue of her homestead application of May 18, 1910.

9. The Court erred in not holding that the application of Florence V. Bodkin exhausted whatever

preference right of entry she may have had at the date of such application, and that such application, not having been perfected by settlement and residence at the time of her death, did not descend to her heirs, and was not inheritable.

10. The Court erred in not holding that the defendants were incompetent to inherit from their daughter, Florence V. Bodkin, at her death, any rights to make or consummate any homestead entry on public lands.

11. The Court erred in holding that defendants inherited the right to consummate the entry of said Florence V. Bodkin.

12. The Court erred in holding that a right to consummate said entry of Florence V. Bodkin, and to press it on to a patent, inured to the heirs of Florence V. Bodkin, defendants herein, notwithstanding they had already used and exhausted their homestead rights at the time of her death.

13. The Court erred in not granting to plaintiff the relief prayed for in his complaint.

14. The Court erred in dismissing the complaint of plaintiff.

Wherefore appellant prays that said decree be reversed and that said District Court for the Southern District of California, Southern Division, be ordered to enter a decree reversing the decision of the lower court in said cause.

Henry M. Willis
Attorney for Appellant."

"E-51 Equity

ORDER ALLOWING APPEAL.

Upon motion of Henry M. Willis, solicitor and counsel for complainant, it is hereby ordered that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit from the decree heretofore filed and entered herein, be, and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibit, stipulations and all stipulations and proceedings be forthwith transmitted to the said United States Circuit Court of Appeals. It is further ordered that the bond on appeal be fixed at the sum of $250.00

Dated July 31, 1922.

BLEDSOE
JUDGE."

"E-51 EQUITY.

CITATION ON APPEAL.

UNITED STATES OF AMERICA—SS.

To Patrick H. Bodkin, and Arabella Bodkin, his wife: Greeting:

You are hereby cited and admonished to be and appear at the session of the United States Circuit Court of Appeals of the Ninth Circuit, in the City of San Francisco, in the State of California, on the 6th day of September 1922, pursuant to an order allowing an appeal filed and entered in the Clerk's office of the District Court of the United States for the Southern District of California, Southern Division, from a final decree signed, filed and entered

on the 5th day of May, 1922, in that certain suit, being in equity No. E.—51, wherein Charles E. Wells is plaintiff and appellant and you are defendants and appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in said order allowing the appeal mentioned, should not be corrected, and why justice should not be done to the parties in that behalf.

Witness the Honorable Erskine M. Ross, Judge of the United States Circuit Court for the Ninth Circuit, this 7th day of August, 1922, and of the Independence of the United States 146.

Ross.
U. S. Circuit Judge for
the Ninth Circuit.

"E—51 EQUITY.

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS, that we, Charles E. Wells, as principal and R. L. Culpepper, by occupation rancher, residing at Riverside County, in the Southern District of California, and W. B. Edwards by occupation rancher, residing at Riverside County in the Southern District of California, as sureties, are held and firmly bound unto Patrick H. Bodkin and Arabella Bodkin, his wife, in the sum of Two Hundred Fifty ($250.00)

Dollars, lawful money of the United States, to be paid to them and their respective executors, administrators and successors; to which payment, will and truly to be made, we bind ourselves and each of us, jointly and severally, and each of our heirs, executors, and administrators by these presents.

Sealed with our seals and dated this 4th day of August, 1922.

Whereas the above named Charles E. Wells has petitioned for an appeal to the United States Circuit Court of Appeals for the Ninth Circuit to reverse the judgment of the District Court of the United States for the Southern District of California, Southern Division, in the above entitled cause:

Now therefore, the condition of this obligation is such that if the above named Charles E. Wells shall prosecute his said appeal to effect and answer all costs if he fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and effect.

Charles E. Wells.
R. L. Culpepper.
W. B. Edwards.

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)ss.

On this 4th day of August, 1922, personally appeared before me R. L. Culpepper, and W. B. Edwards, respectively known to me to be persons described in and who duly executed the foregoing in-

strument, as parties thereto, and respectively acknowledged, each for himself, that they executed the same as their free act and deed for the purposes therein set forth.

And the said R. L. Culpepper, and W. B. Edwards being respectively by me duly sworn, says, each for himself and not for the other, that he is a resident and householder of the said county of Riverside, in the Southern District of California, and that he is worth the sum of $500.00 over and above his just debts and legal liability and property exempt from execution.

R. L. Culpepper.
W. B. Edwards.

Subscribed and sworn to before me this 4th day of August 1922.

Dean Edgerton
Notary Public in and for the County of Riverside, State of California.

[Notarial Seal]

The within bond is approved both as to sufficiency and form this 7th day of August, 1922.

Ross
Circuit Judge.

37 Thereafter the court made an order extending time for printing and filing Transcript on Appeal in words and figures as follows, towit:

"IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

CHARLES E. WELLS,)
Plaintiff,)
vs)
PATRICK H. BODKIN, and)
ARABELLA BODKIN, his wife,)
Defendants.)
E. 51-Equity

ORDER EXTENDING TIME FOR FILING TRANSCRIPT ON APPEAL.

It appearing to the court that there is good cause therefor:

IT IS HEREBY ORDERED that plaintiff and appellant in the above entitled cause be, and he is hereby granted to and including the 5th day of October 1922, in which to complete, cause to be printed and filed, the transcript on appeal in the above entitled action.

Dated this 30th day of August, 1922.

ROSS
Circuit Judge

Approved as to form
as per Rule 45.

DAN V. NOLAND,
Attorney for Defendants."

IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

CHARLES E. WELLS,)
Plaintiff,)
vs)
PATRICK H. BODKIN, and)
ARABELLA BODKIN, his wife,)
Defendants.)
E. 51-Equity

ORDER EXTENDING TIME FOR FILING TRANSCRIPT ON APPEAL.

It appearing to the court that there is good cause therefor:

IT IS HEREBY ORDERED that plaintiff and appellant in the above entitled cause be, and he is hereby granted to and including the 31st day of October 1922, in which to complete, cause to be printed and filed, the transcript on appeal in the above entitled action.

Dated this 25th day of September, 1922.

BLEDSOE
Judge.

Approved as to form
as per Rule 45.

DAN V. NOLAND
Attorney for Defendants.

It is stipulated between attorneys for plaintiff and defendants that the foregoing is a true and correct statement on appeal, and contains all the records necessary for complete determination of the issues involved in this cause; and that the same may be used as a true and correct statement on appeal in pursuance of Rule No. 77.

HENRY M. WILLIS
Attorney for Plaintiff.

H. F. BRIDGES and
DAN V. NOLAND
Attorneys for Defendants.

Approved and allowed as a stipulated statement of the case on appeal, this 25th day of September, 1922.

BLEDSOE
District Judge.

(Endorsed): E-51 Equity. IN THE DISTRICT COURT OF THE UNITED STATES SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION. CHARLES E. WELLS, Plaintiff, VS PATRICK H. BODKIN, and ARABELLA BODKIN, his wife, DEFENDANTS. AGREED STATEMENT ON APPEAL. FILED Sep. 25 1922, CHAS. N. WILLIAMS, Clerk, By L. J. CORDES Deputy Clerk, HENRY M. WILLIS, SUITE 511 CITIZENS NATIONAL BANK BLDG., LOS ANGELES, CAL. Attorney for Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES, SOUTHERN DISTRICT OF CALIFORNIA.
(SOUTHERN DIVISION)

CHARLES E. WELLS, Plaintiff,
vs
PATRICK H. BODKIN, and ARABELLA BODKIN. Defendants.
) No.-E. 51 Equity.

I, Charles N. Williams, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 123 pages, numbered from 1 to 123 inclusive, to be the Transcript of Record on Appeal in the above-entitled cause, as printed by the Appellant and presented to me for comparison and certification, and that the same has been compared and corrected by me and contains a full, true and correct copy of the Agreed Statement on Appeal under Equity Rule No. 77.

I DO FURTHER CERTIFY that the fees of the Clerk for comparing, correcting and certifying the foregoing Record on Appeal, amount to $ 27.50; and that said amount has been paid me by the Appellant herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the Seal of the District Court of the United States of America, in and for the Southern District

(SEAL) of California, Southern Division, this 25 day of October, in the year of our Lord One Thousand Nine Hundred and Twenty-two, and of our Independence the One Hundred and Forty-seventh.

(Seal) CHARLES N. WILLIAMS,
Clerk of the District Court of the United States of America, in and for the Southern District of California.
By R. S. Zimmerman,
Deputy.

Due service of the within and receipt of 3 copies thereof is hereby admitted this 26th day of October, 1922.

DAN V. NOLAND and
H. F. BRIDGES,
Attorneys for Appellees.

[Endorsed]: Printed Transcript of Record. Filed October 27, 1922. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

No. 3939

United States

Circuit Court of Appeals

For the Ninth Circuit.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

PROCEEDINGS HAD IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

At a stated term to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Wednesday, the seventh day of February, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable WILcuit Judge, Presiding; The Honorable WILLIAM W. MORROW, Circuit Judge; The Judge.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Order of Submission.

ORDERED appeal in the above-entitled cause argued by Mr. Henry M. Willis, counsel for the appellant, and by Mr. Dan V. Noland, counsel for the appellees, and submitted to the Court for consideration and decision.

At a stated term to wit, the October Term, A. D. 1922, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the city and county of San Francisco, in the State of California, on Monday, the seventh day of May, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable WILLIAM B. GILBERT, Senior Circuit Judge, Presiding; The Honorable ERSKINE M. ROSS, Circuit Judge; The Honorable FRANK H. RUDKIN, Circuit Judge.

IN THE MATTER OF THE FILING OF CERTAIN OPINIONS AND OF THE FILING AND RECORDING OF CERTAIN DECREES.

By direction of the Honorable William B. Gilbert, William W. Morrow and Frank H. Rudkin, Circuit Judges, before whom the causes were heard, ORDERED that the typewritten opinion this day rendered by this Court in each of the following entitled causes be forthwith filed by the clerk, and that a decree be filed, and recorded in the minutes of this Court in each of the causes in accordance with the opinion filed therein: * * * Charles E. Wells, Appellant, vs. Patrick H. Bodkin and Arabella Bodkin, Appellees. No. 3939. * * *

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Opinion U. S. Circuit Court of Appeals.

Upon Appeal from the United States District Court for the Southern District of California, Southern Division.

Before GILBERT, MORROW and RUDKIN, Circuit Judges.

This was a suit in equity to have the patentees of certain lands declared trustees for the plaintiff. The facts stated chronologically are as follows: May 18, 1903, one Geiger made homestead entry of the land in controversy; September 8, 1903, the land was withdrawn from public entry by the Secretary of the Interior under the Reclamation Act (32 Stat. 388); January 30, 1908, Florence V. Bodkin filed a contest against the Geiger entry; March 7, 1908, Geiger filed a relinquishment of his entry; July 1, 1908, the contestant was notified by the local land office that she had a preference right of entry for a period of 30 days after the land was

restored to entry; January 10, 1910, the land was restored to settlement on April 18, 1910, and to public entry on May 18, 1910; May 18, 1910, the plaintiff and contestant each made homestead application for the land, but on the same day the applications were suspended for investigation as to the character of the land by the Surveyor-General; March 25, 1912, the contestant died; May 22, 1912, the suspension was removed, and the land again restored to public entry; June 3, 1912, the local land office rejected the homestead application of the plaintiff, and allowed the application of the successful contestant; November 13, 1912, the decision of the local land office was affirmed by the Commissioner of the General Land Office; May 27, 1913, the Secretary of the Interior reversed the decision of the Commissioner because of the death of the contestant, holding that she had acquired no rights by her mere application to enter that would descend to her heirs; August 29, 1913, on rehearing, the Secretary of the Interior overruled his former decision, holding that the contestant acquired no rights by her application to enter that would descend to her heirs, but denied the rehearing upon the ground that the father of the contestant had made a homestead entry in his own right, and this precluded him and his wife from perfecting the application of the contestants as her heirs; the Florence V. Bodkin entry was accordingly cancelled and the application of the plaintiff allowed; January 3, 1914, in the exercise of his supervisory authority the Secretary of the Interior decided that

the father of the deceased contestant might elect within 30 days to relinquish his own homestead entry and make a new entry based on the application of the deceased contestant, with his wife as coheir; the father relinquished his homestead entry accordingly, and upon the entry of himself and wife the patent now in controversy was issued. Upon final hearing the court below dismissed the complaint, and the plaintiff has appealed.

RUDKIN, Circuit Judge (after stating the facts):

It was held by the Supreme Court in the recent case of McLaren vs. Fleicher, 256 U. S. 477, that where land is withdrawn from public entry under the Reclamation Act, a successful contestant of a homestead entry has 30 days after the land is restored to public entry within which to exercise his preference right. Had the contestant in this case survived, that decision would be decisive of every question presented by this appeal, for the facts in the two cases would then be identical. It only remains to consider whether the appellees, as heirs, have succeeded to all the rights of the contestant. The original act of May 14, 1880 (20 Stat. 140), creating the preference right, was silent as to the rights of heirs, in case the contestant died before the final termination of the contest; but this omission was cured by the act of July 26, 1892 (27 Stat. 270), which provides as follows:

> "That should any person who has initiated a contest die before the final termination of the same, said contest shall not abate by reason

thereof, but his heirs who are citizens of the United States, may continue the prosecution under such rules and regulations as the Secretary of the Interior may prescribe, and said heirs shall be entitled to the same rights under this act that contestant would have been if his death had not occurred."

The appellant contends that the contest in this case was finally terminated by the relinquishment of the Geiger entry, and that Congress has made no provision for succession and descent with reference to a mere application to enter. In discussing this question upon the rehearing in the present case the Secretary of the Interior said:

"This statute was manifestly enacted in recognition of the rights acquired and acquirable by a contestant under his contest, and was designed to secure all such rights to the contestant's heirs. To restrict the term used, 'the final termination of the' contest, to the termination thereof as regards the contestee, only, would be contrary to the reason and purpose of the act. No interest of the contestee called for the enactment of such a law. The interest of the contestant, however, based upon a consideration, the payment of the costs of contest on the promise of a prospective right of entry, called for just such an enactment which should secure to such contestant and to his heirs that for which such consideration had been given by him, in part if not wholly as in the present case; and good faith on the part of the

United States with such contestant required such an enactment to apply to all cases where the contestant's death intervenes before the right of entry given him inchoately with his privilege of contest is merged into actual entry or otherwise extinguished in some of the ways indicated. It is within the reason and spirit of the statute so to construe it, and such construction is consonant to the terms and necessary to effect the purpose and object of the statute. 'Where a provision admits of more than one construction, that one will be adopted which best serves to carry out the purposes of the act.' Bernier vs. Bernier (147 U. S. 242).

"The reason assigned for the holding in the case of Garvey vs. Tuiska (*supra*), that Congress had made no provision for succession and descent with reference to a mere application to enter, does not therefore apply in the case of an application to enter filed under a contestant's preference right, but in such cases, by the Act of July 26, 1892 (*supra*), the contestant's heirs have the right to perfect such application filed by him and pending at his death and to make entry thereon." 42 L. D. 340.

This construction of the statute by the department charged with its administration is just and reasonable, and should be followed by the courts. The question whether the heir should be required or permitted to relinquish a homestead entry in

his own right was one between him and the United States with which the appellant had no concern.

It appearing, therefore, that the rights of the contestant were superior to the rights of the appellant, and that the appellees have succeeded to all such rights by operation of law, the decree of the court below must be affirmed, and,

IT IS SO ORDERED.

[Endorsed]: Opinion. Filed May 7, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Decree U. S. Circuit Court of Appeals.

Appeal from the District Court of the United States for the Southern District of California, Southern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of California, Southern Division, and was duly submitted.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court in this cause be, and hereby is, affirmed, with costs in favor of the appellees and against the appellant.

It is further ordered, adjudged and decreed by this Court, that the appellees recover against the appellant for their costs herein expended, and have execution therefor.

[Endorsed]: Decree. Filed and entered May 7, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Petition for Appeal to Supreme Court of the United States and Order Allowing Same.

Now comes the above appellant, to wit, Charles E. Wells, by his counsel, and feeling himself aggrieved by the final decree of this Court entered on the 7th day of May, 1923, affirming the decree below filed in the case on the 5th day of May, 1922, hereby

prays that an appeal may be allowed him from the said decree of the Circuit Court of Appeals for the Ninth Circuit to the Supreme Court of the United States for the reasons set forth in the assignment of errors filed herewith.

Petitioner further prays that a citation issue as provided by law, and that a transcript of the record of the proceedings and documents upon which said decree was based, as set out in the praecipe herewith, duly authenticated, be sent to the Supreme Court of the United States in Washington, District of Columbia, under the rules of said court in said cases made and provided.

And petitioner further prays that the proper order relating to the required security to be required of him be made.

HENRY M. WILLIS,
Attorney for Appellant.

Appeal allowed upon giving bond as required by law in the sum of $500.00. I certify that the matter in controversy herein as shown by the records exceeds in value $3,000.00, exclusive of interest and cost.

Dated this 12 day of July, 1923.

ERSKINE M. ROSS,
Judge of the U. S. Circuit Court of Appeals for the Ninth Circuit.

[Endorsed]: Petition and Order for Appeal to Supreme Court of the United States. Filed Jul. 18, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Receipt of copy of within petition hereby acknowledged this 17th day of July, 1923.

DAN V. NOLAND,
Per D.,
Attorney for Appellees.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Assignment of Errors on Appeal to the Supreme Court of the United States.

Comes now the above-named appellant, Charles E. Wells, by his counsel, and in connection with his petition for appeal says that, in the record, proceedings and in the final decree of the Court, manifest error has intervened to the prejudice of the appellant, to wit:

1. The Court erred in holding that the successful contestant of a homestead entry on lands, which at the time of contest and of cancellation of entry were withdrawn from all forms of disposal under the first form of withdrawal under the Reclamation Act (32 Stat. 388), secured the preference right of

entry provided by Act of May 14, 1880 (20 Stat. 140).

2. The Court erred in holding that the Land Department did not make a mistake of law in finding and deciding that Florence V. Bodkin secured a preference right of entry under the Act of May 14, 1880 (20 Stat. 140), as a result of the successful termination of her contest of the Geiger entry at a time when the lands involved were withdrawn from all forms of disposal under the Reclamation Act (32 Stat. 388).

3. The Court erred in holding that a valid preferential right to enter lands was initiated by Florence V. Bodkin as a result of the cancellation of the Geiger entry under her contest, instituted and conducted to cancellation of the existing entry while the lands involved were withdrawn from all forms of disposal under the Reclamation Act.

4. The Court erred in not holding that the regulations of the Secretary of the Interior of January 19, 1909, vacated and annulled any right that may theretofore have come to Florence V. Bodkin by reason of her contest of the Geiger entry and its cancellation of July 1, 1908.

5. The Court erred in holding that the appellees as heirs of Florence V. Bodkin, were competent to inherit the homestead rights of Florence V. Bodkin, on her death on March 25, 1912, notwithstanding appellees were then and there homestead entrymen on other lands under the homestad laws of the United States.

6. The Court erred in holding that the preference right claimed by Florence V. Bodkin as a result of her contest of the Geiger entry was not exhausted by her homestead application of May 18, 1910.

7. The Court erred in holding that the preference right claimed by Florence V. Bodkin as a result of her contest of the Geiger entry was inheritable and passed to her heirs on her death on March 25, 1912, under the provisions of the Act of July 26, 1892 (27 Stat. 270), after it had been used by her in making the homestead application of May 18, 1910.

8. The Court erred in holding that the contest by Florence V. Bodkin of the Geiger entry was not terminated by the homestead application of Florence V. Bodkin.

9. The Court erred in holding that the homestead application of Florence V. Bodkin of May 18, 1910, based on a claim of preference right flowing from successful termination of her contest of the Geiger entry on lands at the time withdrawn from all forms of disposal, was superior to the homestead application of appellant, based on a claim of settler's preference right, flowing from his settlement on the land on April 18, 1910.

10. The Court erred in holding that the Land Department did not err in matter of law when on May 2, 1914, it canceled the homestead entry of appellant, theretofore allowed on October 14, 1913, and permitted the appellees herein, as heirs of

Florence V. Bodkin, to make a homestead entry on the land.

11. The Court erred in affirming the decree of the court below dismissing the complaint of appellant.

12. The decree is contrary to law.

WHEREFORE, appellant prays that the decree of the United States Circuit Court of Appeals for the Ninth Circuit may be reversed.

HENRY M. WILLIS,
Attorney for Appellant.

[Endorsed]: Assignment of Errors on Appeal to the Supreme Court of the United States. Filed Jul. 18, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Received copy of the within assignment of errors this 17th day of July, 1923.

DAN V. NOLAND,
Per D.,
Attorney for Appellees.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Bond on Appeal.

KNOW ALL MEN BY THESE PRESENTS, that we, Charles E. Wells, as principal, and R. L. Culpepper, by occupation rancher, residing at Riverside County, in the Southern District of California, and W. B. Edwards, by occupation rancher, residing at Riverside County in the Southern District of California, as sureties, are held and firmly bound unto Patrick H. Bodkin and Arabella Bodkin in the sum of $500.00, lawful money of the United States, to be paid to them and to their executors, administrators or assigns; to which payment well and truly to be made we bind ourselves and each of us, severally, and each of our heirs, executors and administrators by these presents.

Sealed with our seals and dated this 14th day of July, 1923.

Whereas the above-named Charles E. Wells has petitioned for an appeal to the Supreme Court of the United States from the decision of the United States Circuit Court of Appeals for the Ninth Circuit, entered the 7th day of May, 1923, in the above-entitled cause affirming a decision of the District Court of the United States, Southern District of California, Southern Division, in the above-entitled cause:

Now, therefore, the condition of this obligation is such that if the above-named Charles E. Wells shall prosecute his appeal to effect and answer all costs, if he fails to make good his plea, then this obliga-

tion shall be void; otherwise to remain in full force and effect.

CHARLES E. WELLS,
Principal.
W. B. EDWARDS,
R. L. CULPEPPER,
Sureties.

State of California,
County of Riverside,—ss.

On this 14th day of July, 1923, personally appeared before me R. L. Culpepper and W. B. Edwards, known to me to be the persons described in and who duly executed the foregoing instrument as parties thereto, and acknowledged that they executed the same as their free act and deed for the purpose therein set forth.

And the said R. L. Culpepper and W. B. Edwards, being by me duly sworn, each for himself says that he is a resident and householder in the said Southern District of California, and that he is worth double the amount named in the foregoing instrument, over and above all his debts, and liabilities in property exempt from execution.

W. B. EDWARDS.
R. L. CULPEPPER.

Subscribed and sworn to before me this 14th day of July, A. D. 1923.

[Seal] DEAN EDGERTON,
Notary Public in and for the County of Riverside, State of California.

The within bond is approved both as to sufficiency and form this 16th day of July, 1923.

ROSS,
Circuit Judge.

[Endorsed]: Bond on Appeal. Filed Jul. 18, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Receipt of copy of within Bond on Appeal hereby acknowledged this 17th day of July, 1923.

DAN V. NOLAND,
Per D.,
Attorney for Appellees.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Praecipe for Transcript of Record on Appeal to the Supreme Court of the United States.

To the Clerk of said Court:

The appellant hereby requests the following be made up and transmitted as a complete record on which to submit the cause on the hearing thereof in the Supreme Court of the United States, and elects to have the record in said cause printed by and

under the supervision of the Clerk of the said Supreme Court under the rules thereof and pursuant to the provisions of the Act of February 13, 1911 (36 Stat. 901). The parts of the record deemed necessary to print in addition to the printed record heretofore deposited with you pursuant to the aforesaid act of February 13, 1911, is as follows:

1. The opinion of this Circuit Court of Appeals.
2. The decree of this Circuit Court of Appeals.
3. Petition for appeal and order allowing same.
4. Assignment of errors.
5. Bond on appeal as same may hereafter be approved by the Court or a Justice.
6. Citation to appellees to appear in Supreme Court.
7. This designation of parts of record in this court for printing of record in Supreme Court of the United States.
8. Clerk's certificate as to the transcript.

Dated this 12th day of July, 1923.

HENRY M. WILLIS,
Attorney for Appellant.

[Endorsed]: Praecipe for Transcript of Record on Appeal to the Supreme Court of the United States. Filed Jul. 18, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

Receipt of copy of within Praecipe hereby acknowledged this 17th day of July, 1923.

DAN V. NOLAND,
Per D.,
Attorney for Appellees.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Certificate of Clerk U. S. Circuit Court of Appeals to Transcript of Record upon Appeal to the Supreme Court of the United States.

I, Frank D. Monckton, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing one hundred and forty-six (146) pages, numbered from and including 1 to and including 146, to be a full, true and correct copy of the record under Rule 8 of the Supreme Court of the United States, in the above-entitled cause, including the assignment of errors on appeal to the Supreme Court of the United States and of all proceedings had, and of all papers, including the opinion filed in the said Circuit Court of Appeals in the above-entitled case, made pursuant to praecipe of counsel for the appellant, filed July 18, 1923, as the originals thereof remain on file and appear of record in my office, and that the same constitutes the transcript of record upon appeal to the Supreme Court of the United States in the above-entitled cause.

ATTEST my hand and the seal of the United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco, in the State of California, this 24th day of July, A. D. 1923.

[Seal] F. D. MONCKTON,
Clerk.
By Paul P. O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. 3939.

CHARLES E. WELLS,

Appellant,

vs.

PATRICK H. BODKIN and ARABELLA BODKIN,

Appellees.

Citation on Appeal.

United States of America,—ss.

To Patrick H. Bodkin and Arabella Bodkin, GREETING:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, within sixty days from the date hereof, pursuant to an appeal, filed in the Clerk's office of the United States Circuit Court of Appeals for the Ninth Circuit, wherein Charles E. Wells is the appellant and you are the appellees, to show cause, if any there be, why the decree rendered against said appellant as in said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable ERSKINE M. ROSS, Justice United States Circuit Court of Appeals for the Ninth Circuit, this 12th day of July, in the

year of our Lord one thousand nine hundred and twenty-three.

ERSKINE M. ROSS,
Judge of the U. S. Circuit Court of Appeals for the Ninth Circuit.

Receipt of copy of the within citation is hereby acknowledged this 17th day of July, 1923.

DAN V. NOLAND,
Per D.,
Attorney for Appellees.

[Endorsed]: Citation on Appeal. Filed Jul. 18, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

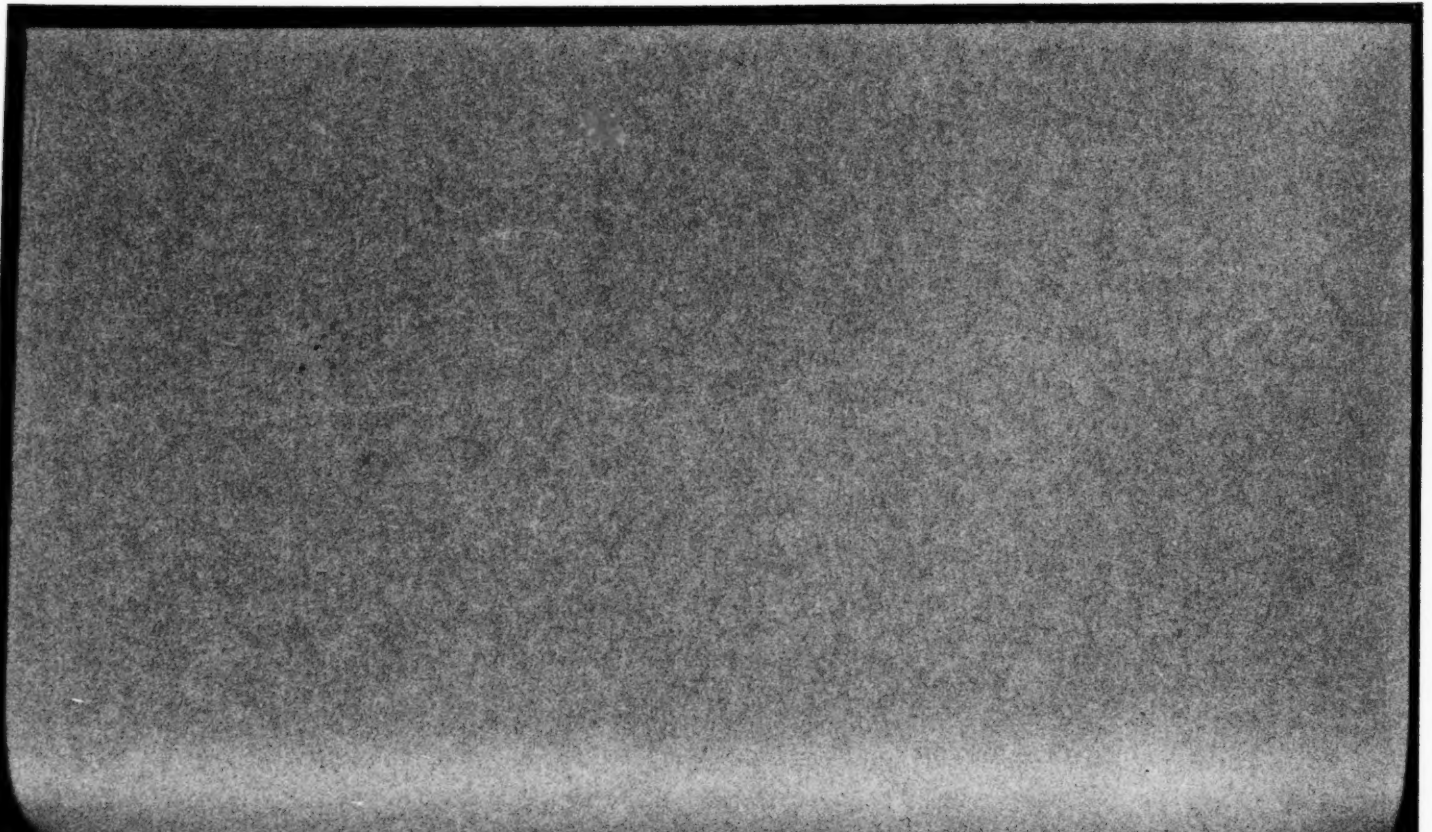
October Term, 1925.

No. 146.

Mrs. Charles E. Wells, Administratrix of the Estate of Charles E. Wells,
Appellant,
vs.
Francis E. Bodine and Arabella Bodine,
Appellees.

BRIEF OF APPELLANT.

Mrs. Charles E. Wells, in Pro. Per.



IN THE

SUPREME COURT

OF THE

UNITED STATES.

October Term, 1924.

No. 144.

Mrs. Charles E. Wells, Administratrix of the Estate of Charles E. Wells,
Appellant,

vs.

Patrick H. Bodkin and Arabella Bodkin,
Appellees.

BRIEF OF APPELLANT.

Statement of the Case.

This is a suit in equity to have the patentees of certain lands declared trustees for the plaintiff. The facts stated chronologically are as follows:

May 18, 1903, one Geiger made homestead entry of the land in controversy.

September 8, 1903, the land was withdrawn from public entry by the Secretary of the Interior under the Reclamation Act (32 Stat. 388), said withdrawal being what is known as a "first form" withdrawal.

June 6, 1905, the Secretary of the Interior promulgated a regulation purporting to provide for contest pending the withdrawal of entries made prior to the withdrawal (33 L. D. 607), a peculiar provision of the right attempted to be provided thereby being that its *initiation* was to be considered as "suspended" until such unknown future time as the withdrawal might, perchance, be vacated.

On January 30, 1908, one Florence Bodkin, daughter of appellees, filed application to contest the Geiger entry, and on March 13, 1908, Geiger relinquished his entry, no trial of the contest being had.

On July 1, 1908, the register of the local land office notified Florence Bodkin that as a consequence of her application to contest and the relinquishment of the Geiger entry she had been awarded a preferred right of making entry to the land in question according to the terms of the aforesaid regulation, at any time within thirty days after the first form withdrawal might be vacated, date of such vacation being unstated.

On or about August 1, 1908, appellant purchased a township plat from the register of the local land office on the margin of which was printed: "The purchaser of this plat is entitled to definite information of what is vacant government land," said plat showing the quarter section previously entered by Geiger to be vacant and unclaimed.

On April 18, 1910, the withdrawal was, by order of the Secretary of the Interior, vacated to the extent that settlement rights were proclaimed to be attachable under the land laws, and appellant thereupon settled upon said quarter section in ignorance of the legal claims of any other person.

On May 18, 1910, the withdrawal was completely vacated and the land made subject to the full operation of the general land laws, and accordingly on that date appellant made homestead application for the land in question, said application being based on said settlement.

On the same date Florence Bodkin tendered application to make homestead entry to the same land, basing her application on her alleged preferred right claimed to have been acquired.

March 25, 1912, Florence Bodkin died, but notwithstanding, on June 3, 1912, the local land office rejected the application of appellant for alleged conflict with the alleged preferred right

of Bodkin, and accepted the entry of Florence Bodkin, and on appeal the Commissioner of the General Land Office made the same error.

May 27, 1913, on appeal to the Secretary of the Interior, the previous decisions were reversed on the ground that there was no authority in law for the allowance of an entry in the name of a deceased person. The entry of Bodkin was accordingly cancelled and the entry of appellant, filed as aforesaid, May 18, 1910, was accepted.

August 29, 1913, appellees applied for a rehearing of said appeal, and in said rehearing the claims of appellants was again denied.

Thereafter appellees applied for the exercise of the supervisory authority of the Secretary, still contending, only, for the right to perfect both homestead claims at the same time, and on January 3, 1914, some assistant secretary rendered decision therein, again denying the contention, but suggested a relief not petitioned for to the effect that "if" Florence Bodkin had been prevented by intimidation from residing upon the land applied for, and her heirs then wished to perfect her application and Patrick H. Bodkin would relinquish the homestead entry held in his own right, the entry of appellant would be cancelled to permit the entry of the appellees.

Thereafter, on March 6, 1914, Patrick H. Bodkin relinquished the homestead entry held in his own right, and at the same time tendered homestead application for the land then covered by the entry of appellant.

May 2, 1914, without a hearing on the charge of intimidation and without evidence, the Commissioner of the General Land Office, as directed by the letter of the said assistant secretary, cancelled the entry of appellant and closed the case.

September 22, 1914, appellant filed application to contest the entry of Patrick H. Bodkin, allowed as one of the heirs of Florence Bodkin, alleging that the same had been secured through fraud and perjury in making the charge of intimidation, but the local land office rejected said application on the ground that it did not state facts sufficient for a cause of action. Appellant appealed this rejection to the Commissioner of the General Land Office, and said appeal is still pending and undecided.

In his answer to the complaint of appellant in the United States District Court appellees reiterated at length the charges of intimidation, but at the trial, as in the Land Department, no evidence of intimidation was offered.

Thereafter, on or about September 15, 1914, exhibiting his entry allowed as heir to Florence Bodkin, Patrick H. Bodkin obtained a writ of

ejectment from the Superior Court of the county, directed against appellant, as a consequence of which and of the action of the Land Department, appellant lost possession of the land entered and was prevented from making final proof of compliance with the homestead law.

Argument.

In the judgments of the court below there were two major and fundamental errors, viz.: (1) Error in assuming that Florence Bodkin, under the circumstances of this case, acquired any preferential right to enter the land in controversy, and (2) even assuming that such right was acquired, error in holding that appellees had not lost, forfeited or abandoned all right to succeed under such as the heirs of Florence Bodkin, or to displace the entry of appellant.

Discussing this last mentioned error, it must be evident that the right of an heir could be no greater than that of the person inheriting under, and as Florence Bodkin, conceding her a perfectly legal and valid right of entry to a certain tract, would certainly have lost that right by making entry of some other tract and claiming same until entry of the original tract by another, just so must appellees be held to have abandoned all right to succeed under the claim of Florence Bodkin.

By the same law under which it is claimed Florence Bodkin acquired a preferred right by contest, a settler is given a preferred right of just three times the power, and yet in Cawood v. Dumas, 22 L. D. 585, the Land Department decided:

> "The right to change entry from one tract to another can not be allowed in the presence of an intervening adverse right, even though the applicant may have been the prior settler on the tract thus applied for."

To the same effect is Cowen v. Asher, 6 L. D. 785; Noyes v. Beebe, 16 L. D. 313, and many others.

The entry of appellant was allowed in accordance with department rulings made with full knowledge of all the circumstances; if appellees wanted to change their entry at that time they made no mention of it.

> "An entry should not be cancelled where it was allowed in accordance with departmental rulings then in force, and the entryman relying thereon has proceeded in compliance with the law."
>
> Allen v. Cooley, 2 L. D. 261;
>
> Oliver v. Thomas, 5 L. D. 292.

The department at all times held against the contention of appellants because their claim could only be allowed by their maintaining at

the same time two residences. It was due to the suggestion of the department, and not to appellees, that a cure of such illegal claim involving the cancellation of appellants' entry was arranged.

> "A person can not maintain two residences at one and the same time, and two tracts being thus attempted to be held illegally, such illegality may not be cured after completion of proof on one tract, where an intervening right has attached to the other."
>
> Robinson v. Packard, 6 L. D. 225.

Might it not be that the reason appellees finally consented—under the friendly suggestion of the department—to relinquish entry to the other land claimed in order to legally claim the land covered by the entry of appellant was because appellant had, under his entry and in good faith, so improved the land that it had become more desirable to appellees than the land they then resided upon? All the circumstances go to indicate such to be the real reason, and the possibility of it under a government of law is intolerable. Are there no limits of time or of circumstance to the peculiar claim of right here attributed to the appellees?

But appellant is convinced that Florence Bodkin never at any time had any right that was founded on law. If he had thought otherwise he would not have offered his homestead appli-

cation on this land. It has always been and always will be that wherever there is reason to deny an entry of land there is the same reason to deny the *right* of entry. At the time Bodkin filed contest the land was withdrawn from entry. It was stated by the department to have been withdrawn "from all forms of disposition" and "withdrawn from the operation of the land laws." It was certainly so withdrawn. The law authorizing such withdrawal was mandatory, and applied to all land where certain conditions were found to exist. By making withdrawal the Secretary of the Interior certified to the existence of such conditions. When he found such conditions no longer existed, he was commanded to restore the land to entry—to vacate the withdrawal. But while, by continuing the withdrawal, he certified to the continued existence of the conditions requiring the same, the secretary had no authority but to maintain the status of complete withdrawal. There was no middle ground authorized, and concerning the law of contest, which has been much cited by counsel for appellees and by the courts in this and other cases, that law, as was all other land laws, was as completely removed from application to this land under withdrawal as if no such laws had ever been made, and they therefore furnished no grounds for declaring what right of entry Florence Bodkin here had. The right

claimed for her depended solely upon the regulation promulgated by the Secretary of the Interior on June 6, 1905, and on nothing else (33 L. D. 607).

Such regulations were not necessary to carry any purpose of the Reclamation Act into force and effect, they were in fact contrary to the mandate to "withdraw" the land, and the subterfuge provided of considering the preferred right resulting to be a right *initiating* only at such unknown future time as the withdrawal might perhaps be vacated, was a subterfuge permitting a preferred class of claimants to *evade* every intent and purpose of the withdrawal. It was unconstitutional because it set up a discrimination not possible to be overcome by those not in the preferred class.

It was proven in the case of Edwards v. Bodkin, 249 Fed. 562 (sustained by this court), that the withdrawal interfered with proceedings of entrymen who had made entry before withdrawal, such entrymen could not possibly contest themselves, or get a preferred right to make a second entry "at any time within thirty days after notice" that the land had been released from withdrawal. It amounted to a scheme to forcibly foreclose the rights of an entryman under conditions changed after entry, in favor of a new claimant coming on the scene in full

view of the changed conditions, and proposed to hold the "right" of such new claimant indefinitely, time without limit, while time increased the value of his absentee holding of right.

Counsel for appellees were successful in inducing the lower courts to believe that this court had, in the case of McLaren v. Fleischer, 253 U. S. 479, sustained the legality of such a contest as this, and of the resultant preferred right. But however similar the facts may have been in that case to the case here, the questions raised were quite the opposite. There the application of the contest law was conceded, here the application of that law is expressly denied and error assigned to its previous consideration. There the only question raised was that of the remarkable and unlimited extension attempted to be provided the right resultant. Here appellant calls attention to the fact that before extension was attempted to be provided, the regulations *first* provided for the proceedings depended on to initiate that right, recognizing thereby that the contest law, insofar as this land was concerned, had ceased to exist. The regulations, therefore, first provided the proceeding of contest, specified the grounds of contest and specified every single thing that a contest law might require, leaving nothing to be measured by the contest law provided by Congress on May

14, 1880, except as a reference for counsel for these preference rights claimants to camouflage the fiction that their claims were founded on law. The

(NOTE: The above copy was prepared by Charles E. Wells before his death; it shows to be unfinished, but the heirs know of no one competent to finish it. They therefore leave the case in the hands of the court thus unfinished.)

(Signed) (MRS.) CHARLES E. WELLS,
Administratrix.

(23)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1924.

No. 144.

SUSIE WELLS, ADMINISTRATRIX OF THE ESTATE OF CHARLES E. WELLS, APPELLANT,

vs.

PATRICK H. BODKIN AND ARABELLA BODKIN.

AMENDED BRIEF FOR APPELLANT.

Appellant hereby amends her brief filed in the above-entitled action in the following particulars:

I.

Appellant hereby alleges that through an error the above entitled action has been filed in the name of Mrs. Charles E. Wells, administratrix of the estate of Charles E. Wells. That in truth, and as a matter of fact, the said Mrs. Charles E. Wells was appointed administratrix of the estate of Charles E. Wells in the Superior Court of the County of Riverside,

State of California, under the name of Susie Wells, and appellant therefore requests that the above-entitled action appear as follows, to-wit:

SUSIE WELLS, *Administratrix of the Estate of Charles E. Wells, Appellant,*

vs.

PATRICK H. BODKIN and ARABELLA BODKIN, *Appellees.*

II.

That the appellant through an error and oversight omitted a portion of her statement of the case immediately following the sentence ending at line 25, page 5 of appellant's brief filed in this action and therefore amends her brief at line 25, page 5, by adding the following words, to-wit: "On May 18, 1910, Patrick H. Bodkin filed homestead in his own name."

SUSIE WELLS,
Administratrix;
Also known as (Mrs.) Charles E. Wells, Administratrix.

IN THE

Supreme Court of the United States

October Term, 1924.

No. 144.

MRS. CHARLES E. WELLS, *Administratrix of the Estate of Charles E. Wells,*
Appellant,

vs.

PATRICK H. BODKIN, *and*
ARABELLA BODKIN,
Appellees.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF THE APPELLEE, ARABELLA BODKIN.

PATRICK H. LOUGHRAN,
Mills Building,
Washington, D. C.
Attorney for the Appellee,
Arabella Bodkin.

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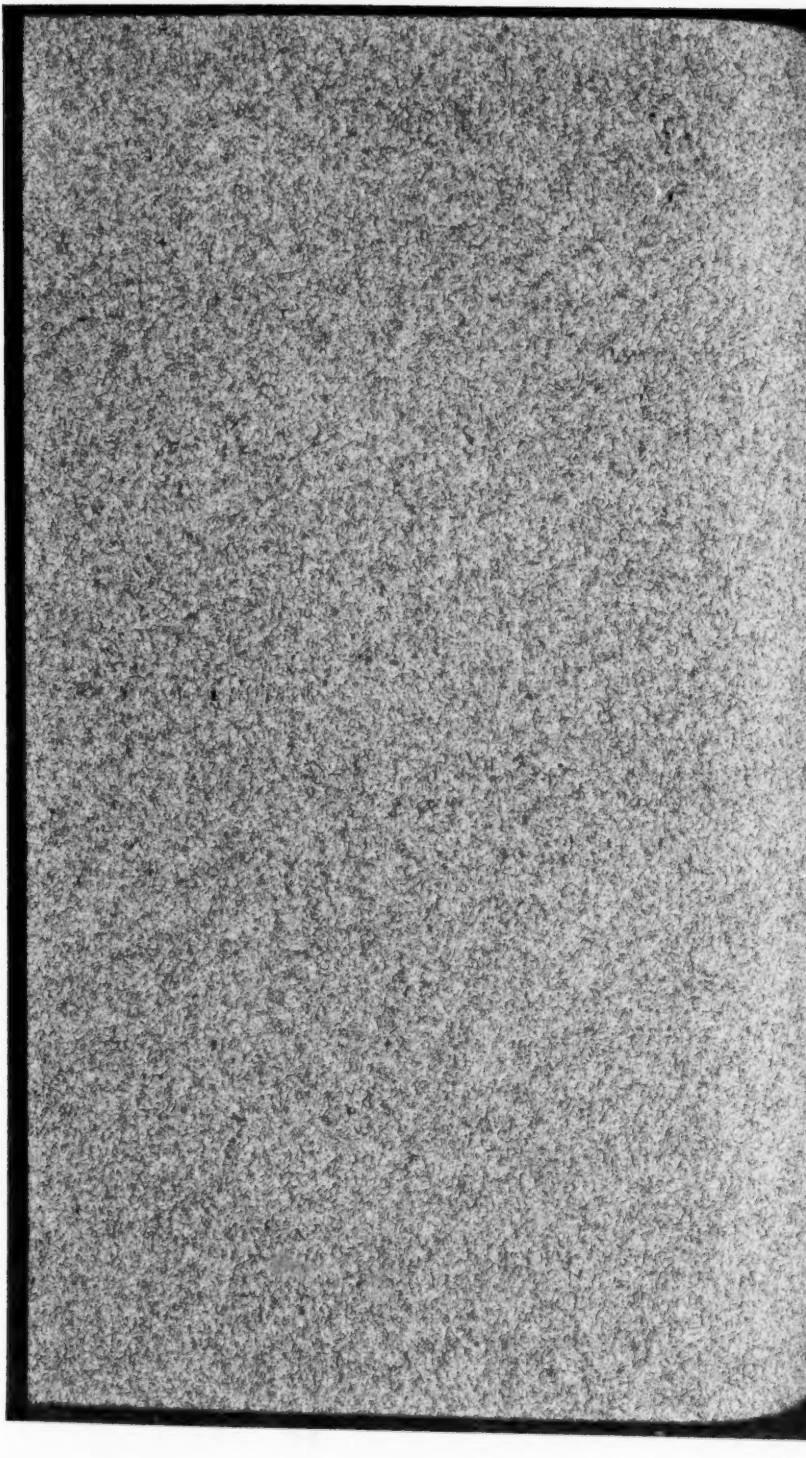

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STATUTES.

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IN THE

Supreme Court of the United States

October Term, 1924.

No. 144.

MRS. CHARLES E. WELLS, *Administratrix of the Estate of Charles E. Wells,*
Appellant,

vs.

PATRICK H. BODKIN, *and*
ARABELLA BODKIN,
Appellees.

ON APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

BRIEF OF THE APPELLEE, ARABELLA BODKIN.

BRIEF OF APPELLEE.

THE ASSIGNMENT OF ERRORS.

It is believed that the statement of facts that precedes the opinion of the Circuit Court of Appeals (Rec. 131 to 133), should suffice for all the purposes of this court in connection with the merits of the twelve al-

leged errors that are specified in the assignment of errors (Rec. 139 to 142). Hence, to spare expense to the appellee, Arabella Bodkin, widow of Patrick H. Bodkin (defendant with her in the courts below), the facts in this litigation will not be recited herein.

The 1st, the 2nd, the 3rd, the 4th, the 6th and the 9th of the twelve specifications in the assignment present questions of law that have been decided by this court adversely to all contentions made by appellant (McLaren v. Fleischer, 256 U. S., 477); and the Circuit Court of Appeals so decided (R. 133).

The 11th and 12th of the propositions appearing in the assignment are not *specifications* of error at all, but simply charges of error generally without the slightest attempt at specification. Whether appellant meant by such general charges to invite scrutiny of the record by the court in quest for questions of law or fact lurking therein and not detected by appellant's astute counsel in the courts below, is purely conjectural.

The remaining specifications in the assignment, viz., the 5th, the 7th, the 8th and the 10th, present questions that are determinable with reference to the act of Congress of July 26, 1892 (27 Stat. 270), entitled an "act to amend Section 2 of an act approved May 14, 1880" (21 Stat. 150), and the law with respect to the rights of heirs of applicants for homestead entries.

Said amending statute provides, in brief, that the heirs of a contestant of a public land entry shall be entitled to the same right under the second section of the said act of 1880 that "that contestant would have been if his death had not occurred," viz., the right to prosecute the contest to final judgment and, if success-

ful, to a preference over all others, for a period of thirty days after notice of final judgment, as an applicant for entry.

SOME OMISSIONS FROM AND INACCURACIES IN APPELLANT'S BRIEF.

Where a page is referred to in this chapter the reference is to a page of appellant's brief. At page 4 it is stated that the homestead entry Florence Bodkin contested was relinquished. But it is not stated (although the fact is among those in the stipulation as to the facts, Rec. 43), that the relinquishment was filed after the entryman had been duly served with notice of the contest. Nor is it stated at any place in appellant's brief that the Land Department found and decided that the relinquishment was "procured through your (Florence V. Bodkin's) contest." (Rec. 43.)

At page 5 it is asserted that appellant's deceased husband "settled upon said quarter section in ignorance of the legal claims of any other person." However it is in proof that on the 21st day of August, 1913, appellant's husband made an affidavit, which he filed in the Land Department, admitting that he knew of Florence V. Bodkin's right of preference of entry and saying "he (Wells) made overtures to her to purchase her waiver of such supposed right," etc. (Rec. 87 and 88.)

IT IS BEYOND QUESTION THAT FLORENCE V. BODKIN ACQUIRED AND EXERCISED A PREFERENCE RIGHT TO ENTER.

The stipulated facts and the decision of this court in McLaren v. Flescher, *supra*, render it plain that

Florence V. Bodkin acquired the preference right provided for by the second section of the act of 1880.

It is stipulated (Rec. 41 and 42) that not until May 18, 1910, was it possible for her to exercise such preference right. It is also stipulated (Rec. 44) that on that date she exercised such right by filing an application to make homestead entry. It is further stipulated (Rec. 42) that on said date, and by competent authoriay, her application was suspended and that such suspension was not raised until May 22, 1912. In the interim, on March 25, 1912, nearly two years after filing her application, as set out in the stipulation (Rec. 42), Florence V. Bodkin died, "leaving surviving her, as her heirs at law, the said Patrick H. Bodkin, her father, and the said Arabella Bodkin, her mother, defendants herein."

Acting without knowledge of the death of Florence V. Bodkin, the Register of the local land office, on June 1, 1912, allowed a homestead entry to be made under her application (Rec. 47). Also on that date the Register allowed a homestead entry *of other land* to be made by the said Patrick H. Bodkin under an application by him filed on May 18, 1910. (Rec. 69 and 70.)

December 3, 1912, Patrick H. Bodkin filed in the office of the Register at Los Angeles his affidavit "that he entered on this entry of his deceased daughter and cleared about two acres on November 29, 1912" (Rec. 47.)

May 27, 1913, the Assistant Secretary of the Interior decided that the heirs of Florence V. Bodkin had not acquired any right whatever by virtue of the latter's application and the entry allowed thereunder, and that such application and entry should be rejected

and canceled, respectively, and entry by the appellant's deceased husband allowed (Rec. 52 and 53). Said decision was adhered to by the Assistant Secretary on August 29, 1913, when he denied a motion for rehearing that had been filed on behalf of the heirs of Florence V. Bodkin (Rec. 54 to 60). Accordingly, and on October 14, 1913, a homestead entry of the land by the appellant's husband was allowed (Rec. 46).

But on January 3, 1914, in action on a petition filed on behalf of the heirs of Florence V. Bodkin, the Assistant Secretary of the Interior, perceiving and admitting the error in his previous decisions, decided that the said heirs were entitled to complete and perfect a homestead entry under Florence V. Bodkin's said application and made order accordingly, as follows:

> "Thirty days from notice of this decision is therefore hereby allowed the father of said Florence V. Bodkin, appearing herein as one of her heirs, to elect whether he will relinquish his present homestead entry and make, with his wife as co-heir, homestead entry based upon said Florence V. Bodkin's application, at the expiration of which period further adjudication will be had.
>
> "The case is remanded for action in accordance with the foregoing." (Rec. 63.)

Thereafter Patrick H. Bodkin relinquished the homestead entry he had made in his individual right and, joining with his wife, Arabella Bodkin, made homestead entry of the land here in suit and subsequently obtained a patent therefor, the patent running to the heirs of Florence V. Bodkin, deceased. (Rec. 65 to 71.)

RIGHTS OF HEIRS OF PRIOR APPLICANTS FOR HOMESTEAD ENTRY.

Whether the aforesaid decision of the Assistant Secretary of the Interior of January 13, 1914, deprived the appellant's deceased husband of a right under the homestead laws to an entry of the land in suit is the real and only question in this litigation. *Was appellant's deceased husband that applicant for the land in suit who was prior in right? If not, the Interior Department's said decision neither denied nor deprived him of any rights under the law.*

It is conceded, we think, that Florence V. Bodkin's application was prior in right by virtue of the right of preference which the act of 1880 conferred on her by reason of her successful contest against the Geiger homestead entry.

Although the decision of the Land Department in Wells v. Bodkin (42 L. D., 340), is that decision which the Department subsequently revoked, nevertheless it contains a discussion of the act of July 26, 1892, *supra*, which is indubitably sound. The following is quoted therefrom:

> "The purpose of the act of July 26, 1892, *supra*, giving to a contestant's heirs the right of succession to his contest and title to 'the same rights' he would have if he had not died, was, as stated in the case of Heirs of Robert M. Averett (40 L. D., 608): 'to provide a means whereby the heirs of a deceased contestant might derive the same benefits from a contest commenced by their ancestor in his lifetime that such ancestor himself might have been entitled to had he lived; that is, the joint right of the heirs to continue the prosecution of a contest and a preference right to make entry of the land by all of said heirs who are citizens of the United States.'

> "This statute was manifestly enacted in recognition of the rights acquired and acquirable by a contestant under his contest, and was designed to secure all such rights to the contestant's heirs." (42 L. D., 340 at 341-342.)

And as the right of a successful contestant is the right *to an entry,* may we not quite confidently assert that under the act of 1892 the heirs of Florence V. Bodkin succeeded to her *right to an entry.* The right of those heirs to an entry, was the same right Florence V. Bodkin had, viz., *a preference right, a preference right over Wells, an unquestionably clear prior right over Wells.*

But appellant seems to contend that Patrick H. Bodkin was not qualified to exercise the preference right which the act of 1892 conferred upon him as one of the heirs of Florence V. Bodkin, because Patrick H. Bodkin was claiming under an unperfected homestead entry made in his own right. And appellant seems further to contend that Arabella Bodkin was not qualified to exercise the preference right which the act of 1892 conferred upon her as one of the heirs of Florence V. Bodkin, because Arabella was the wife of Patrick H. Bodkin, living with him, and therefore a married woman having a status disabling her to make a homestead entry.

But those contentions of appellant are beside the question here, viz, was Florence V. Bodkin's preference right and her application sufficient in law to defeat all the claims of the appellant's deceased husband? Moreover, the appellant's said contentions are made without appreciation of the proposition that the act of 1892 does not confer the right upon the heirs of the successful contestant conditionally. *The right is*

conferred upon the heirs unconditionally. The act of 1892 does not declare that the heirs competent to succeed to the successful contentant's right shall be heirs who are qualified to make homestead entries in their individual right.

Besides, as remarked by the Circuit Court of Appeals (Rec. 135 and 136):

> "The question whether the heir should be required or permitted to relinquish a homestead entry in his own right was one between him and the United States with which the appellant had no concern."

But let us drop from this case, for purposes of argument only, the aforesaid succession act of 1892. Was Florence V. Bodkin's prior right as an applicant by virtue of the act of 1880 any different in law from the right of an applicant who is prior simply because he applied before others applied? A person who applies before others apply acquires a priority which vests in his heirs upon his death. And what vests in them is a right to an entry by them under and by virtue only of the decedent's application. And such entry they may perfect, complete and cause to ripen into a patent, *without residing upon the land.* The Interior Department has so held, and that it has so held for many, many years is known to this court.

When Fisher v. Rule (248 U. S. 314) was under consideration here, this court took notice of Fisher v Heirs of Rule (43 L. D. 217). That Departmental decision is cited in this court's opinion in Fisher v. Rule, *supra.* And that Departmental decision cites Bertram C. Noble (43 L. D., 75). Hence it is assumed that the purport of the two Departmental decisions

just mentioned are entirely familiar to this court; and because of that assumption we will not quote from either. Sufficient is it to remark that those two cases relate to *homestead entries* by persons who died before they established residence under their entries, the Interior Department deciding in each that the heirs could perfect, complete and obtain patents under the entries *without residing on the lands therein*, provided the lands were cultivated by the heirs.

While allowance of an entry in the name of Florence V. Bodkin after her death was a null and void entry and her heirs, of course, were not benefited thereby and not entitled thereby to invoke the principle enunciated in the two Departmental decisions just alluded to, nevertheless, those heirs had the status and rights of heirs of a prior applicant. That status and those rights were the same status and rights that were considered by the Interior Department in Lotton v. Hobbie (43 L. D., 229). In that case no entry had been allowed before the death of the prior applicant. However, the Interior Department said, and cited many authorities to support it in so saying, that *a valid application is equivalent to an actual entry so far as the rights of an applicant and his heirs are concerned.* The syllabus of the decision in Lotton v. Hobbie is this:

> "By the filing of an application to make homestead entry of land properly subject thereto the applicant acquires a right which upon his death prior to allowance of entry descends to his widow or heirs, who may make entry and perfect title by proper cultivation for the required period without actual residence on the land." (43 L. D., 229.)

In Fisher v. Rule, *supra,* this Court pointed out that the Land Department wrongfully canceled the entry of Rule, a decedent, doing so under a misapprehension as to the law bearing on the rights of Rule's heirs. Before the Department corrected the erroneous action Fisher tendered an application for the land. It was under the corrective decision that patent issued to the heirs of Rule. In the case at bar the Land Department wrongfully rejected the homestead application of Florence V. Bodkin, deceased, doing so under a misapprehension as to the law bearing on the right of Florence V. Bodkin's heirs. Before the Department corrected the erroneous action Wells was permitted to make entry. It was under the corrective decision that Wells' entry was canceled and that patent issued to the heirs of Florence V. Bodkin.

In Fisher v. Rule, *supra,* this court referred to the established rule of decision by the Land Department that the heirs of a deceased entryman who had never established residence may complete the decedent's entry and obtain patent thereunder without residing upon the land, provided the heirs cultivate it. The reference was in these words:

> "Even if under a right construction of the homestead law Rule was not entitled to the patent —*which we do not at all intimate*—Fisher is not in a position to take advantage of the error." (Italics ours.)

If this court would "not at all intimate" that a rule of decision of the Land Department that allows heirs of homestead *entrymen* to acquire patents without residing upon the lands described in the patents, was unsound and unlawful, why may we not confidently

believe that in this case, *a case wherein the heirs of a homestead applicant are shown to have resided upon and cultivated the lands applied for by their deceased daughter*, that this court will "not at all intimate" that Patrick H. Bodkin and Arabella Bodkin received a patent to public land to which Charles E. Wells was entitled under the law.

In short, unless this court knows of some law under which Wells acquired a right to the land in suit and is of opinion that such law was disregarded, overlooked, or erroneously construed to the prejudice of Wells, the concurring decrees below must be affirmed.

Respectfully submitted,

PATRICK H. LOUGHRAN,
Attorney for Arabella Bodkin.

the appellees declared trustees for himself of a tract of land patented to them under the public land laws.[1]

Mrs. Susie Wells, pro se, submitted.

Mr. Patrick H. Loughran, for appellees.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This is an appeal from the United States Circuit Court of Appeals for the Ninth Circuit under § 241. It was a bill in equity to have Patrick H. Bodkin and Arabella Bodkin, patentees of a quarter section of public land in the county of Riverside, California, declared trustees for the complainant Charles E. Wells. In May, 1903, one Geiger made a homestead entry of the land in dispute. In September of that year the land was withdrawn from public entry by the Secretary of the Interior under the Reclamation Act. 32 Stat. 388. Florence V. Bodkin filed a contest against the entry of Geiger on the 30th of January, 1908, pending this withdrawal. In March, 1908, Geiger filed a relinquishment of his entry, and in July, 1908, the contestant was notified by the local land office that she had a preference right of entry for a period of thirty days after the land should be restored to entry. On April 18, 1910, the land was restored to settlement, and to public entry on May 18, 1910. On the latter date Charles E. Wells, after having made a settlement, and Florence V. Bodkin, the contestant, each made a homestead application for the land. The applications on the same day were suspended for investigation as to the character of the land by the Surveyor General. On May 22, 1912, the suspension was removed and the land again restored to public entry. On June 3, 1912, the local land office rejected the homestead application of Wells and

[1] Charles E. Wells, appellant, died while this appeal was pending in this Court, and his administratrix was substituted as appellant.

allowed the application of Florence Bodkin; and this decision was affirmed by the Commissioner of the General Land Office on November 13, 1912. On May 27, 1913, the Secretary of the Interior reversed the decision of the Commissioner, because it appeared that on the 25th of March, 1912, before the suspension for investigation was removed, Florence Bodkin had died; and held that she had acquired no rights by her application to enter that would descend to her heirs. On August 29, 1913, the Secretary on rehearing overruled this decision and held that the contestant might have acquired rights by her application to enter that would have descended to her heirs, but denied a rehearing to her heirs, who were her father and mother, Patrick H. Bodkin and Arabella Bodkin, on the ground that Patrick H. Bodkin had made a homestead entry in his own right on other lands, and this precluded him and his wife from perfecting the application for a homestead as heirs of the contestant. Accordingly, the entry of Florence V. Bodkin was canceled and the application of Wells was allowed. But this was changed on January 3, 1914, when the Secretary of the Interior, in the exercise of his supervisory authority, decided that Patrick H. Bodkin, the father of the deceased contestant, might elect within thirty days to relinquish his own homestead entry on other lands and make a new entry based on the application of the deceased contestant, his daughter, with his wife as co-heir. The father thereupon relinquished his own homestead entry and, upon the entry of himself and his wife of the quarter section here in controversy, the patent issued to him. The District Court dismissed the bill, and this ruling was affirmed by the Circuit Court of Appeals.

Under the decision by this Court in the case of *McLaren* v. *Fleischer*, 256 U. S. 477, Florence V. Bodkin, as the successful contestant of the homestead entry of Geiger pending the withdrawal of the land from public entry

under the Reclamation Act, had thirty days after the land was restored to public entry within which to exercise her preference right of entry as a homesteader of the land. Had she lived, therefore, no question would have arisen here. The controversy arises on the effect of the proviso of § 2 of the Act of May 14, 1880, 21 Stat. 141, entitled "An Act for the Relief of Settlers on Public Lands," as amended by the Act of July 26, 1892, c. 251, 27 Stat. 270. The second section as amended reads as follows:

"Sec. 2. In all cases where any person has contested, paid the land office fees, and procured the cancellation of any pre-emption, homestead, or timber-culture entry, he shall be notified by the register of the land office of the district in which such land is situated of such cancellation, and shall be allowed thirty days from date of such notice to enter said lands: Provided, That said register shall be entitled to a fee of one dollar for the giving of such notice, to be paid by the contestant and not to be reported: Provided further, That should any such person who has initiated a contest die before the final termination of the same, said contest shall not abate by reason thereof, but his heirs who are citizens of the United States, may continue the prosecution under such rules and regulations as the Secretary of the Interior may prescribe, and said heirs shall be entitled to the same rights under this act that contestant would have been if his death had not occurred."

The contention on behalf of the appellant is, that the relinquishment of the Geiger entry, upon which the contestant won the contest, was the final termination of it and that, thereafter, the contestant had only a mere right to make an application to enter, and that the statute had made no provision for succession or descent with reference to that, because the contest here is not with Geiger but is with Wells, who, having made a settlement of the land, filed his application on the same day that the contestant did. We think this a very narrow and

unwarranted construction of the meaning of the section. We concur in the opinion of the Secretary of the Interior when, in discussing this question, he said, 42 L. D. 340, 342:

"To restrict the term used, 'the final termination of the' contest, to the termination thereof as regards the contestee, only, would be contrary to the reason and purpose of the act. No interest of the contestee called for the enactment of such a law. The interest of the contestant, however, based upon a consideration, the payment of the costs of contest on the promise of a prospective right of entry, called for just such an enactment which should secure to such contestant and to his heirs that for which such consideration had been given by him, in part if not wholly, as in the present case; and good faith on the part of the United States with such contestant required such an enactment to apply to all cases where the contestant's death intervenes before the right of entry given him inchoately with his privilege of contest is merged into actual entry or otherwise extinguished in some of the ways indicated."

Further objection is made that the circumstance that Patrick H. Bodkin had himself made a homestead entry in his own right deprived him and his wife, co-heirs of the contestant, their daughter, of the capacity to inherit. The only objection to the inheritance was that under the homestead laws an entryman can not perfect title to two homesteads. If he chooses to relinquish one, it removes objection to his perfecting the other, certainly when he does this under the permission granted him by the Secretary of the Interior. As the Circuit Court of Appeals said in this case, the question whether the heir should be required or permitted to relinquish a homestead entry in his own right was one between him and the United States, with which the appellant had no concern.

The decree is affirmed.

WELLS, ADMINISTRATRIX OF THE ESTATE OF CHARLES E. WELLS, DECEASED, *v.* BODKIN ET AL.

APPEAL FROM THE CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

No. 144. Argued March 6, 1925.—Decided April 13, 1925.

The Act of May 14, 1880, confers a preference right of entry upon the successful contestant of a homestead claim and provides that, should the person who initiated a contest die "before the final termination of the same", the contest shall not abate, but that his heirs, who are citizens of the United States, may continue the prosecution and shall be entitled to the same rights under the act that the contestant would have if his death had not occurred. *Held:*

1. That, where the contestee relinquished and the contestant made her homestead application within the time allowed and later died, her heirs were entitled, in prosecuting the application, to preference over a stranger to the contest whose homestead application was made on the same day as the decedent's. P. 476.
2. The fact that an heir applying had himself made a homestead entry in his own right was no obstacle, when he relinquished it under permission of the Secretary of the Interior for the purpose of availing himself of the inherited right of entry. P. 478.

289 Fed. 245 affirmed.

APPEAL from a decree of the Circuit Court of Appeals which affirmed a decree of the District Court dismissing a bill whereby the appellant's decedent sought to have